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DEPARTMENT OF JUSTICE

8 CFR Parts 1003 and 1240

[Docket No. EOIR 125F; AG Order No. 2907–2007]

RIN 1125–AA27

Authorities Delegated to the Director of the Executive Office for Immigration Review, and the Chief Immigration Judge

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Final rule.

SUMMARY: This rule revises the Attorney General's regulations relating to the delegation of authority to the Director of the Executive Office for Immigration Review (EOIR) and the Chief Immigration Judge with respect to the adjudicatory process. These rules are intended to improve the management of EOIR.

DATES: This rule is effective October 22, 2007.

FOR FURTHER INFORMATION CONTACT: Kevin Chapman, Acting General Counsel, Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041; telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:

Background

On December 26, 2000, the Department of Justice (Department) published a proposed rule in the **Federal Register** at 65 FR 81434, to revise the Attorney General's delegation of management authority to officials of the Executive Office for Immigration Review (EOIR). Changes proposed by that rule would add specific information to 8 CFR on the organization of EOIR and outline the respective authorities of EOIR's Director, the Chairman of the Board of Immigration Appeals, and the Chief Immigration Judge.

On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (HSA) creating the new Department of Homeland Security (DHS) and transferring the functions of the former Immigration and Naturalization Service (INS) to the DHS. Pub. L. 107–296, tit. IV, subtits. D, E, F, 116 Stat. 2135, 2192 (Nov. 25, 2002) (effective March 1, 2003). The Attorney General retains the functions of the EOIR in the Department of Justice. HSA § 1101, 6 U.S.C. 521; section 103(g) of the Immigration and Nationality Act (INA, or the Act), 8 U.S.C. 1103(g). In order to implement the transfer of functions under the HSA, the Attorney General reorganized title 8 of the Code of Federal Regulations and divided the regulations into chapters, so that chapter I contains regulations relating to the functions of the former INS (now DHS) and chapter V contains regulations relating to the functions of EOIR. 68 FR 9824 (Feb. 28, 2003); *see also* 68 FR 10349 (March 5, 2003). The regulations governing proceedings before EOIR are now contained in 8 CFR chapter V, beginning with part 1001.

Portions of the proposed rule relating to the organization of the Board of Immigration Appeals (Board) and the powers delegated to the Chairman of the Board have already been incorporated into a separate final rule published by the Department on August 26, 2002, entitled *Board of Immigration Appeals: Procedural Reforms To Improve Case Management,* 67 FR 54878 (Aug. 26, 2002) (now codified at 8 CFR 1003.1). The Department does not make any further changes in this rule to the powers of the Chairman or the organization of the Board.

With respect to the remaining provisions of the proposed rule relating to the organization of EOIR and the authority of the Director, the Chief Immigration Judge, and the General Counsel, this rule finalizes the provisions as proposed in that rule as final without substantial change, but makes necessary modifications to that rule to include technical changes to reflect the enactment of the HSA, including the reorganization and renumbering of 8 CFR. In addition, as discussed further below, the Department is adding additional management directives flowing from the Attorney General's 2006 review of improving the workings of the immigration hearing process before the immigration judges and the Board.

Public Comments

The Department allowed a 60-day public comment period on the proposed rule that ended on February 26, 2001. The Department received comments from three members of the public on the proposed rule.

A few of the comments discussed sections which pertained to the Board. As mentioned above, the Department has already published a regulation relating to the organization of the Board and the powers delegated to the Chairman of the Board, and comments relating to the Board were fully discussed in that separate final rule, with one exception discussed here.

One commenter objected to the proposed redesignation of the members of the Board to be known as appellate immigration judges, citing possible confusion by the public. The Department has decided not to make this change and withdraws that portion of the proposed rule. The Act provides that immigration proceedings are conducted by officials known as immigration judges, but the Act also states clearly that these officials are Department of Justice attorneys who are designated by the Attorney General to conduct such proceedings, and they are subject to the Attorney General's direction and control. *See* section 101(b)(4) of the INA (8 U.S.C. 1101(b)(4)). However, there do appear to have been at least some instances of apparent confusion over time among some observers regarding the role and status of the immigration judges. Similarly, the members of the Board are Department of Justice attorneys who serve as the Attorney General's delegates in deciding the cases that come before them. *See* 8 CFR 1003.1(a)(1), (d)(1). In their quasi-judicial roles, the immigration judges and the Board members exercise very important functions, making adjudicatory decisions and exercising discretion on behalf of the Attorney General. However, they are Executive Branch adjudicators and do not serve in purely a judicial capacity. As the Supreme Court has made clear, the immigration adjudication process (and the Board's role in that process) is an

executive function that implicates not only legal and factual issues, but also important immigration policy and foreign relations interests, and the ''judiciary is not well positioned to shoulder primary responsibility'' for such determinations. *INS* v. *Aguirre-Aguirre,* 526 U.S. 415, 425 (1999).[1] The Department has decided not to change the title of the Board members, in order to avoid possible confusion between the key executive functions of the Board and the judicial role of the Federal courts.

The following is a discussion of the remaining comments relating to the organization of EOIR and the authority of the Director and Chief Immigration Judge, and the Department's response.

All three commenters raised concerns with the provisions that allow the setting of priorities or time frames for the resolution of cases. They expressed concern that an official could direct the outcome of a specific case by setting an unyielding completion goal which would prevent an immigration judge from taking the time necessary to adjudicate a case fairly. On this issue, one commenter believes the rule can be interpreted to abrogate the parties' right to a full and complete hearing. This commenter would have the rule recognize that only the immigration judge should determine the amount of time necessary to complete a case.

One commenter asks whether the rule is intended (a) To authorize an official to establish time frames for particular types or classes of cases which would be guidelines for the judges to follow, but permit a departure from the guidelines in individual cases when necessary; or (b) to have an official direct a judge to cut short a particular case regardless of the judge's need to take additional time.

The Department does not believe that the authority to establish time frames and guidelines ''directs'' the result of the adjudication. Time frames and guidelines are designed to ensure the timely adjudication and conclusion of proceedings, and their use is well-established in immigration procedure. For example, asylum cases have a statutory completion requirement of 180 days, pursuant to section 208(d)(5)(A)(iii) of the INA. A credible fear review by an immigration judge has a statutory completion requirement of 7 days, under section 235(b)(1)(B)(iii)(III) of the Act. In addition, the Board has an established case management system where single Board members dispose of all assigned appeals within 90 days of completion of the record on appeal, or within 180 days after an appeal is assigned to a three-member panel. 8 CFR 1003.1(e)(8)(i). Moreover, individual immigration judges set hearing calendars and prioritize cases. Within each judge's parameters for calendaring a case, that judge will take the time necessary for the case to be completed. Some cases take less time to complete, some more, and most fall within the estimated times.

Experience has shown that the time frames do not ''direct the result'' of a particular case, but rather that the guidelines promote timely results. The Department shares the commenters' concern for due process and fairness in immigration proceedings. Timely adjudications ensure due process and fairness for the aliens in proceedings, as well as for the government and its citizens who have an interest in having cases adjudicated, benefits conferred, and the laws enforced. *See generally Capital Area Immigrants' Rights Coalition,* v. *U.S. Dep't of Justice*, 264 F. Supp. 2d 14 (D.D.C. 2003) (rejecting challenges to the Attorney General's reform of the Board's procedures in 2002); see also *Nash*, v. *Bowen*, 869 F.2d 675, 681 (2d Cir. 1989) (rejecting administrative law judge (ALJ) challenge to efforts by the Social Security Administration (SSA) to improve the quality, timeliness, and efficiency of the ALJ decision making process; ''those concerns are more appropriately addressed by Congress or by courts through the usual channels of judicial review in Social Security cases. The bottom line in this case is that it was entirely within the Secretary's discretion to adopt reasonable administrative measures in order to improve the decision making process.'') (citations omitted).

Another commenter takes issue with § 1003.0(b)(2), which allows the Director to delegate his authority to others. This commenter is specifically concerned with the Director's ability to delegate his authority to ''any other EOIR employee,'' arguing that such a delegation is too broad. The Department disagrees with this comment and will maintain the regulation as proposed. EOIR is comprised of three adjudicating components as well as certain administrative components and functions. These administrative components and programs are managed by assistant directors and other senior level management officials. On occasion, as the Director shall decide, these officials may be in the best position to respond to a particular delegation of the Director's authority. The Department expects that the Director, who is ultimately responsible for the supervision of EOIR, is best able to delegate his authority and should not be restricted to only a few agency officials.

One commenter objected to the General Counsel's now being ''co-equal'' with the Deputy Director. The commenter expresses concern that the General Counsel is on ''an equal managerial basis with its second in command.'' The Department directs the reader to § 1003.0(d) and (e). The language is clear that the Deputy Director ''shall advise and assist . . . in the management of EOIR,'' while the General Counsel, serving as chief legal counsel of EOIR, ''shall provide legal advice and assistance to the Director [and] Deputy Director''. The Department believes the language delineates the distinction in duties and responsibilities appropriately.

Finally, one commenter proposed a change to the definition of immigration court in § 1003.9(d) arguing that the definition was inaccurate and that the term ''local sites'' should be changed to ''hearing location.'' Currently, there are 54 immigration courts nationwide that create or maintain records of proceedings and serve as locations where proceedings are held before immigration judges. There are also other hearing locations in detail cities or other hearing sites such as correctional facilities where immigration hearings are held before an immigration judge. These other hearing locations are all serviced by an administrative control immigration court and do not serve as locations where documents and correspondence pertaining to a record of proceeding can be filed. Therefore these facilities do not meet the definition of ''immigration court'' even though hearings can be held at locations that are designated by the Office of the Chief Immigration Judge for administrative and public convenience. As the commenter correctly pointed out, state detention facilities, where hearings are held before an immigration judge, would not meet the definition of ''immigration court'' since these facilities do not create or maintain records of proceedings. The Department will therefore maintain the definition of immigration court as proposed in order to avoid any confusion with other

[1] As the Attorney General's delegate, the Board issues precedential decisions which have been accorded appropriate deference under the Supreme Court's decisions in *Chevron* v. *NRDC,* 467 U.S. 837 (1984) (deference due agency interpretation of statutes within delegated authority); *INS* v. *Aguirre-Aguirre,* 526 U.S. 415, 425 (1999) (Attorney General, and hence the Board, accorded Chevron deference); and *INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 448–49 (1987) (same), as administrative interpretations of the Act. *Chevron* deference is appropriate because the Board is interpreting the Act on behalf of the Attorney General. *See also Gonzales* v. *Thomas,* 126 S. Ct. 1613 (2006).

hearing locations where documents and correspondence pertaining to records of proceedings are not accepted.

The Attorney General's Management Review of the Immigration Hearing Process

On January 9, 2006, the Attorney General directed a comprehensive review of the Immigration Courts and the Board of Immigration Appeals. This review was undertaken in response to concerns about the quality of decisions being issued by the immigration judges and the Board and about reports of intemperate behavior by some immigration judges. The Deputy Attorney General and the Associate Attorney General assembled a review team, which over the course of several months conducted hundreds of interviews, administered an online survey, and analyzed thousands of documents to assess the EOIR adjudicative process.

On August 9, 2006, the Attorney General announced that the review was complete, and he directed that a series of measures be taken to improve adjudications by the immigration judges and the Board. EOIR has already been implementing most of those initiatives through administrative and management actions, although several of the initiatives require changes to the existing regulations and are being implemented through separate rulemaking actions.

The following discussion reviews some of the internal management initiatives arising from the Attorney General's review. Although all of the following changes are being implemented through internal management changes within EOIR, this final rule has been revised to include a brief summary of these key initiatives as being among the Director's specific responsibilities, as a permanent reflection of these changes which will continue to be implemented over time.

Among the Attorney General's key priorities was to improve the existing processes for dealing with fraud and abuse in the immigration process. One administrative step to further this goal is the appointment of an anti-fraud officer in EOIR who will be in a position to respond to concerns about instances of fraud arising in some of the hundreds of thousands of cases being adjudicated each year by the immigration judges and the Board, providing for a single point of contact for coordination (both within EOIR and in communications with other interested agencies). U.S. Citizenship and Immigration Services (USCIS), a component of DHS, has established an Office of Fraud Detection and National Security with specific responsibility for identifying instances of fraud among the applications for immigration benefits filed with USCIS, and U.S. Immigration and Customs Enforcement (ICE) has ongoing enforcement efforts against aliens who have submitted fraudulent documents or who seek immigration benefits by fraud or misrepresentation. The United States Attorneys have also successfully prosecuted, or obtained indictments against, numerous individuals and rings that have engaged in widespread immigration fraud (in some cases involving hundreds of instances of fraud in separate cases perpetrated by the same conspirators). Although the immigration judges and the Board are authorized to respond to such fraud on a case-by-case basis,[2] there is also a need for a more systematic response to identified instances of fraud, particularly where there are indications of wide-scale organized efforts to engage in immigration fraud. This final rule has been revised to include a new provision for the General Counsel of EOIR to designate an anti-fraud officer to serve as a point of contact and coordination with respect to instances of fraud arising in administrative proceedings before EOIR.

The final rule also includes new general provisions relating to training, support, and review of the quality of the adjudicatory process, reflecting several of the directives contained in the Attorney General's memorandum of August 9, 2006. Among the Attorney General's other specific directives in the August 9 memorandum were:

#1—Performance appraisals for immigration judges and Board members
#2—Evaluation of newly-appointed immigration judges and Board members within 2 years
#3—Examination in immigration law for newly-appointed immigration judges and Board members
#4—Improved training for immigration judges and Board members
#5—Improved training and guidance for EOIR staff
#6—Improved on-bench reference materials and decision templates
#7—Mechanisms to detect poor conduct and quality
#11—Complaint procedures

In order to summarize and reflect these new initiatives, for the information of participants in immigration proceedings and the general public, this final rule adds several brief new paragraphs to the existing description of the duties of the Director of EOIR in 8 CFR 1003.0(b)(1), as follows:

- Adding a new para (v) to ''Provide for performance appraisals for immigration judges and Board members while fully respecting their roles as adjudicators, including a process for reporting adjudications that reflect temperament problems or poor decisional quality'' (with respect to Attorney General directives #1 and #7)
- Adding a new para (vi) to ''Administer an examination for newly-appointed immigration judges and Board members with respect to their familiarity with key principles of immigration law before they begin to adjudicate matters, and evaluate the temperament and skills of each new immigration judge or Board member within 2 years of appointment'' (with respect to Attorney General directives #2 and #3)
- Adding a new para (vii) to ''Provide for comprehensive, continuing training and support for Board members, immigration judges, and EOIR staff in order to promote the quality and consistency of adjudications'' (with respect to Attorney General directives #4, #5, and #6)
- Adding a new para (viii) to ''Implement a process for receiving, evaluating, and responding to complaints of inappropriate conduct by EOIR adjudicators'' (with respect to Attorney General directive #11)

Regulatory Requirements

Administrative Procedure Act

The provisions of this rule, in general, finalize without substantive change a proposed rule previously published for public notice and comment.

This final rule also incorporates certain management directives relating to the appointment of an anti-fraud officer, and new general provisions relating to training, support, and review of the quality of the adjudicatory process, reflecting several of the directives contained in the Attorney General's memorandum of August 9, 2006. All of these changes are a matter of agency organization, management, or personnel and do not require prior

[2] *See, e.g., Ye* v. *U.S. Dep't of Justice*, 489 F.3d 517 (2d Cir. 2007) (upholding adverse credibility finding where the immigration judge noted 23 striking similarities in form and substance between an alien's asylum affidavit and another applicant's affidavit submitted in a separate asylum case, advised the alien of his concern about the similarities, arranged for DHS to provide her with a redacted copy of the affidavit submitted in the other case, gave the alien several opportunities to address the similarities and provide any innocent explanation, and the alien failed to respond to the immigration judge's concerns).

notice and comment, and accordingly they are being included in this final rule relating to EOIR. *See* 5 U.S.C. 553(a)(2) (exempting ''a matter relating to agency management or personnel''); Id. § 553(b)(A) (exempting ''rules of agency organization, procedure, or practice'').

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and, by approving it, certifies that it will affect only Department employees, individuals in immigration proceedings before the EOIR, and practitioners who appear before EOIR. Therefore, this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised record keeping or reporting requirements.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. This rule is limited to agency organization, management and personnel as described by Executive Order 12866 § 3(d)(3) and, therefore, is not a ''regulation'' or ''rule'' as defined by this Executive Order. Accordingly, this action has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule 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. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Congressional Review Act

This action pertains to agency management, personnel and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal Services, Organization and function (Government agencies).

8 CFR Part 1240

Administrative practice and procedure and Aliens.

■ Accordingly, parts 1003 and 1240 of chapter V of title 8 of the Code of Federal Regulations are amended as follows:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 1. The authority citation for 8 CFR part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

■ 2. Revise § 1003.0 to read as follows:

§ 1003.0 Executive Office for Immigration Review.

(a) *Organization.* Within the Department of Justice, there shall be an Executive Office for Immigration Review (EOIR), headed by a Director who is appointed by the Attorney General. The Director shall be assisted by a Deputy Director and by a General Counsel. EOIR shall include the Board of Immigration Appeals, the Office of the Chief Immigration Judge, the Office of the Chief Administrative Hearing Officer, and such other staff as the Attorney General or Director may provide.

(b) *Powers of the Director.*— (1) *In general.* The Director shall manage EOIR and its employees and shall be responsible for the direction and supervision of the Board, the Office of the Chief Immigration Judge, and the Office of the Chief Administrative Hearing Officer in the execution of their respective duties pursuant to the Act and the provisions of this chapter. Unless otherwise provided by the Attorney General, the Director shall report to the Deputy Attorney General and the Attorney General. The Director shall have the authority to:

(i) Issue operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities;

(ii) Direct the conduct of all EOIR employees to ensure the efficient disposition of all pending cases, including the power, in his discretion, to set priorities or time frames for the resolution of cases; to direct that the adjudication of certain cases be deferred; to regulate the assignment of adjudicators to cases; and otherwise to manage the docket of matters to be decided by the Board, the immigration judges, the Chief Administrative Hearing Officer, or the administrative law judges;

(iii) Provide for appropriate administrative coordination with the other components of the Department of Justice, with the Department of Homeland Security, and with the Department of State;

(iv) Evaluate the performance of the Board of Immigration Appeals, the Office of the Chief Immigration Judge, the Office of the Chief Administrative Hearing Officer, and other EOIR activities, make appropriate reports and inspections, and take corrective action where needed;

(v) Provide for performance appraisals for immigration judges and Board members while fully respecting their

roles as adjudicators, including a process for reporting adjudications that reflect temperament problems or poor decisional quality;

(vi) Administer an examination for newly-appointed immigration judges and Board members with respect to their familiarity with key principles of immigration law before they begin to adjudicate matters, and evaluate the temperament and skills of each new immigration judge or Board member within 2 years of appointment;

(vii) Provide for comprehensive, continuing training and support for Board members, immigration judges, and EOIR staff in order to promote the quality and consistency of adjudications;

(viii) Implement a process for receiving, evaluating, and responding to complaints of inappropriate conduct by EOIR adjudicators; and

(ix) Exercise such other authorities as the Attorney General may provide.

(2) *Delegations.* The Director may delegate the authority given to him by this part or by the Attorney General to the Deputy Director, the General Counsel, the Chairman of the Board of Immigration Appeals, the Chief Immigration Judge, the Chief Administrative Hearing Officer, or any other EOIR employee.

(c) *Limit on the Authority of the Director.* The Director shall have no authority to adjudicate cases arising under the Act or regulations and shall not direct the result of an adjudication assigned to the Board, an immigration judge, the Chief Administrative Hearing Officer, or an Administrative Law Judge; provided, however, that nothing in this part shall be construed to limit the authority of the Director under paragraph (b) of this section.

(d) *Deputy Director.* The Deputy Director shall advise and assist the Director in the management of EOIR and the formulation of policy and guidelines. Unless otherwise limited by law or by order of the Director, the Deputy Director shall exercise the full authority of the Director in the discharge of his or her duties.

(e) *General Counsel.* Subject to the supervision of the Director, the General Counsel shall serve as the chief legal counsel of EOIR. The General Counsel shall provide legal advice and assistance to the Director, Deputy Director, and heads of the components within EOIR, and shall supervise all legal activities of EOIR not related to adjudications arising under the Act or this chapter.

(1) *Professional standards.* The General Counsel shall administer programs to protect the integrity of immigration proceedings before EOIR, including administering the disciplinary program for attorneys and accredited representatives under subpart G of this part.

(2) *Fraud issues.* The General Counsel shall designate an anti-fraud officer who shall—

(i) Serve as a point of contact relating to concerns about possible fraud upon EOIR, particularly with respect to matters relating to fraudulent applications or documents affecting multiple removal proceedings, applications for relief from removal, appeals, or other proceedings before EOIR;

(ii) Coordinate with investigative authorities of the Department of Homeland Security, the Department of Justice, and other appropriate agencies with respect to the identification of and response to such fraud; and

(iii) Notify the EOIR disciplinary counsel and other appropriate authorities with respect to instances of fraud, misrepresentation, or abuse pertaining to an attorney or accredited representative.

(f) *Citizenship Requirement for Employment.* (1) An application to work at EOIR, either as an employee or a volunteer, must include a signed affirmation from the applicant that he or she is a citizen of the United States of America. If requested, the applicant must document United States citizenship.

(2) The Director of EOIR may, by explicit written determination and to the extent permitted by law, authorize the appointment of an alien to an EOIR position when necessary to accomplish the work of EOIR.

Subpart B—Office of the Chief Immigration Judge

■ 3. Revise the heading of Subpart B to read as set forth above.

■ 4. Revise § 1003.9 to read as follows:

§ 1003.9 Office of the Chief Immigration Judge.

(a) *Organization.* Within the Executive Office for Immigration Review, there shall be an Office of the Chief Immigration Judge (OCIJ), consisting of the Chief Immigration Judge, the immigration judges, and such other staff as the Director deems necessary. The Attorney General shall appoint the Chief Immigration Judge. The Director may designate immigration judges to serve as Deputy and Assistant Chief Immigration Judges as may be necessary to assist the Chief Immigration Judge in the management of the OCIJ.

(b) *Powers of the Chief Immigration Judge.* Subject to the supervision of the Director, the Chief Immigration Judge shall be responsible for the supervision, direction, and scheduling of the immigration judges in the conduct of the hearings and duties assigned to them. The Chief Immigration Judge shall have the authority to:

(1) Issue operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities;

(2) Provide for appropriate training of the immigration judges and other OCIJ staff on the conduct of their powers and duties;

(3) Direct the conduct of all employees assigned to OCIJ to ensure the efficient disposition of all pending cases, including the power, in his discretion, to set priorities or time frames for the resolution of cases, to direct that the adjudication of certain cases be deferred, to regulate the assignment of immigration judges to cases, and otherwise to manage the docket of matters to be decided by the immigration judges;

(4) Evaluate the performance of the Immigration Courts and other OCIJ activities by making appropriate reports and inspections, and take corrective action where needed;

(5) Adjudicate cases as an immigration judge; and

(6) Exercise such other authorities as the Director may provide.

(c) *Limit on the Authority of the Chief Immigration Judge.* The Chief Immigration Judge shall have no authority to direct the result of an adjudication assigned to another immigration judge, provided, however, that nothing in this part shall be construed to limit the authority of the Chief Immigration Judge in paragraph (b) of this section.

(d) *Immigration Court.* The term Immigration Court shall refer to the local sites of the OCIJ where proceedings are held before immigration judges and where the records of those proceedings are created and maintained.

■ 5. Revise § 1003.10 to read as follows:

§ 1003.10 Immigration judges.

(a) *Appointment.* The immigration judges are attorneys whom the Attorney General appoints as administrative judges within the Office of the Chief Immigration Judge to conduct specified classes of proceedings, including hearings under section 240 of the Act. Immigration judges shall act as the Attorney General's delegates in the cases that come before them.

(b) *Powers and duties.* In conducting hearings under section 240 of the Act and such other proceedings the

Attorney General may assign to them, immigration judges shall exercise the powers and duties delegated to them by the Act and by the Attorney General through regulation. In deciding the individual cases before them, and subject to the applicable governing standards, immigration judges shall exercise their independent judgment and discretion and may take any action consistent with their authorities under the Act and regulations that is appropriate and necessary for the disposition of such cases. Immigration judges shall administer oaths, receive evidence, and interrogate, examine, and cross-examine aliens and any witnesses. Subject to §§ 1003.35 and 1287.4 of this chapter, they may issue administrative subpoenas for the attendance of witnesses and the presentation of evidence. In all cases, immigration judges shall seek to resolve the questions before them in a timely and impartial manner consistent with the Act and regulations.

(c) *Review.* Decisions of immigration judges are subject to review by the Board of Immigration Appeals in any case in which the Board has jurisdiction as provided in 8 CFR 1003.1.

(d) *Governing standards.* Immigration judges shall be governed by the provisions and limitations prescribed by the Act and this chapter, by the decisions of the Board, and by the Attorney General (through review of a decision of the Board, by written order, or by determination and ruling pursuant to section 103 of the Act).

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

■ 6. The authority citation for 8 CFR part 1240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

Subpart A—Removal Proceedings

§ 1240.1 [Amended]

■ 7. Amend § 1240.1 by removing the first and second sentences of paragraph (a)(2).

Dated: September 12, 2007.

Alberto R. Gonzales,

Attorney General.

[FR Doc. E7–18526 Filed 9–19–07; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 43

[Docket No. FAA–2007–28631; Amendment No. 43–41]

RIN 2120–AJ11

Recording of Major Repairs and Major Alterations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends instructions to aviation maintenance providers regarding submittal of FAA Form 337, Major Repair and Alteration, for either major repair or major alteration; or for extended-range fuel tanks installed within the passenger compartment or a baggage compartment. This change clarifies the mailing instructions when submitting Form 337 to the FAA. The intent of this action is to amend the regulation to ensure mailing requirements are clear and accurate.

DATES: This amendment becomes effective September 20, 2007.

FOR FURTHER INFORMATION CONTACT: Kim Barnette, Aircraft Maintenance Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202–493–4922); facsimile: (202–267–5115); e-mail: *kim.a.barnette@faa.gov*.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on 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.

The FAA is issuing this rulemaking under the authority set forth in 49 U.S.C. 44701(a)(5). This regulation is within the scope of that authority because the Administrator is charged with promoting safe flight of civil aircraft by, among other things, prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.

Background

On September 9, 1987, the FAA published a final rule entitled ''Aircraft Identification and Retention of Fuel System Modification Records,'' (52 FR 34096). Among other changes, this rule amended part 43, Appendix B, by revising the introductory text of paragraph (a) and adding a new paragraph (d). This rule provided instructions so major alterations for fuel tanks and system modifications would be segregated from other major repairs and alterations.

The new paragraph (d) provided instructions for disposition of the Form 337, Major Repair and Alteration, whenever extended-range fuel tanks are installed within the passenger compartment or a baggage compartment. As part of those instructions, paragraph (c)(2) of Appendix B is referenced for distribution of Form 337.

The FAA has found that since adding paragraph (d), there has been a decline in Form 337s received for extended-range fuel tanks. Review of part 43, Appendix B revealed a wrong address. As currently written, paragraph (c)(2) directs individuals to send a copy of Form 337 to an incorrect address. Any FAA Form 337 that describes a modification to an aircraft fuel system or that shows additional tanks installed, should be mailed to the FAA, Aircraft Registration Branch, AFS–751, P.O. Box 25724, Oklahoma City, OK. All other FAA Form 337s should be mailed to the FAA, Aircraft Registration Branch, AFS–750, P.O. Box 25504, Oklahoma City, OK.

The change in this final rule will clarify and correct the mailing instructions and does not affect any other requirements in part 43.

Reason for Final Rule

This final rule amends the mailing instructions for FAA Form 337 in part 43, Appendix B, paragraphs (c) and (d). The change will allow submission of FAA Form 337 to the correct address. The intent of this action is to amend the regulation to ensure that instructions for submitting this form are clear and accurate.

Justification for Immediate Adoption

Because the circumstances described herein warrant immediate action, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) is impracticable and contrary to the public interest. Further, the Administrator finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective in less than 30 days after publication in the **Federal Register**. The amendment ensures FAA's commitment to the Anti Drug Abuse Act of 1988, Subtitle E, FAA Drug Enforcement Assistance Act of 1988.

Paperwork Reduction Act

Information collection requirements associated with this final rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. section 3507(d)), and have been assigned OMB Control Number 2120–0020.

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 OMB control number.

International Compatibility

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because there is not a comparable rule under ICAO standards.

Regulatory 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, the 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 (Public Law 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.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

Since this final rule merely clarifies FAA procedures, the expected outcome will be a minimal impact with positive net benefits, and a regulatory evaluation was not prepared. FAA has, therefore, determined that this final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

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 objectives 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 rule will have a significant economic impact on a substantial number of small entities. If the 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 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.

This final rule merely revises an incorrect mailing address; the expected outcome will have only a minimal impact on any small entity affected by this rulemaking action. 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 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in 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 has determined that it will respond to a domestic safety objective and not considered an unnecessary obstacle to trade.

Unfunded Mandates Assessment

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 with 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.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents 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.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may

review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires 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 your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 43

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 43 of Title 14, Code of Federal Regulations as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATIONS

■ 1. The authority citation for part 43 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44703, 44705, 44707, 44711, 44713, 44717, 44725.

■ 2. Appendix B is amended by revising paragraphs (c) and (d) to read as follows:

Appendix B to Part 43—Recording of Major Repairs and Major Alterations

* * * * *

(c) Except as provided in paragraph (d) of this appendix, for a major repair or major alteration made by a person authorized in § 43.17, the person who performs the major repair or major alteration and the person authorized by § 43.17 to approve that work shall execute an FAA Form 337 at least in duplicate. A completed copy of that form shall be—

(1) Given to the aircraft owner; and

(2) Forwarded to the Federal Aviation Administration, Aircraft Registration Branch, AFS–750, Post Office Box 25504, Oklahoma City, OK 73125, within 48 hours after the work is inspected.

(d) For extended-range fuel tanks installed within the passenger compartment or a baggage compartment, the person who performs the work and the person authorized to approve the work by § 43.7 shall execute an FAA Form 337 in at least triplicate. A completed copy of that form shall be—

(1) Placed on board the aircraft as specified in § 91.417 of this chapter;

(2) Given to the aircraft owner; and

(3) Forwarded to the Federal Aviation Administration, Aircraft Registration Branch, AFS–751, Post Office Box 25724, Oklahoma City, OK 73125, within 48 hours after the work is inspected.

* * * * *

Issued in Washington, DC on August 27, 2007.

James J. Ballough,

Director, Flight Standards Service.

[FR Doc. E7–18584 Filed 9–19–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30570; Amdt. No. 3236]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective September 20, 2007. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 20, 2007.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

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

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each

separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on September 7, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

§ 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [AMENDED]

Effective 25 OCT 2007

Albertville, AL, Albertville Rgnl-Thomas J Brumlik Fld, RNAV (GPS) RWY 23, Amdt 1
Deadhorse, AK, Deadhorse, ILS OR LOC/DME RWY 5, Amdt 2
Deadhorse, AK, Deadhorse, RNAV (GPS) RWY 5, Amdt 1
Deadhorse, AK, Deadhorse, RNAV (GPS) RWY 23, Amdt 1
Deadhorse, AK, Deadhorse, LOC/DM BC RWY 23, Amdt 11
Deadhorse, AK, Deadhorse, VOR/DME RWY 5, Amdt 2
Deadhorse, AK, Deadhorse, VOR/DME RWY 23, Amdt 4
Deadhorse, AK, Deadhorse, VOR RWY 5, Amdt 4
Deadhorse, AK, Deadhorse, VOR RWY 23, Amdt 6
Deadhorse, AK, Deadhorse, Takeoff Minimums and Obstacle DP, Amdt 1
Kenai, AK, Kenai Muni, RNAV (GPS) RWY 1L, Amdt 1
Kenai, AK, Kenai Muni, RNAV (GPS) RWY 19R, Amdt 1
Kenai, AK, Kenai Muni, VOR/DME RWY 1L, Amdt 7
Kenai, AK, Kenai Muni, VOR RWY 19R, Amdt 18
Kenai, AK, Kenai Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Nome, AK, Nome, ILS OR LOC/DME Y RWY 28, Amdt 3
Nome, AK, Nome, ILS OR LOC/DME Z RWY 28, Amdt 3
Nome, AK, Nome, LOC/DME BC RWY 10, Amdt 3
St Johns, AZ, St Johns Industrial Air Park, VOR/DME–A, Amdt 2
St Johns, AZ, St Johns Industrial Air Park, RNAV (GPS) RWY 14, Orig
Bishop, CA, Eastern Sierra Rgnl, LDA/DME RWY 16, Orig
Middletown, DE, Summit, NDB–A, Amdt 7
Chicago/Aurora, IL, Aurora Muni, ILS OR LOC RWY 33, Orig
Chicago/Aurora, IL, Aurora Muni, RNAV (GPS) RWY 33, Amdt 1
Chicago/Aurora, IL, Aurora Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Fort Scott, KS, Fort Scott Muni, NDB RWY 18, Amdt 12
Hagerstown, MD, Hagerstown Regional/Richard A. Henson Fld, ILS OR LOC RWY 9, Orig
Hagerstown, MD, Hagerstown Regional/Richard A. Henson Fld, LOC RWY 9, Orig, CANCELLED
Portland, ME, Portland Intl Jetport, RADAR–1, Orig, CANCELLED
Charlotte, MI, Fitch H. Beach, RNAV (GPS) RWY 20, Orig
Bemidji, MN, Bemidji Regional, ILS OR LOC/DME RWY 25, Orig
Columbus/W Pt/Starkville, MS, Golden Triangle Rgnl, ILS OR LOC RWY 18, Amdt 7
Columbus/W Pt/Starkville, MS, Golden Triangle Rgnl, VOR/DME OR GPS–E, Amdt 5A, CANCELLED
Columbus/W Pt/Starkville, MS, Golden Triangle Rgnl, VOR OR GPS–D, Amdt 5A, CANCELLED
Elizabeth City, NC, Elizabeth City CG Air Station/Regional, ILS OR LOC RWY 10, Amdt 1
Manville, NJ, Central Jersey Regional, RNAV (GPS) RWY 7, Orig
Manville, NJ, Central Jersey Regional, GPS RWY 7, Orig-A, CANCELLED
Manville, NJ, Central Jersey Regional, RNAV (GPS) RWY 25, Orig
Manville, NJ, Central Jersey Regional, Takeoff Minimums and Obstacle DP, Amdt 3
New York, NY, John F. Kennedy Intl, ILS OR LOC RWY 31R, Amdt 15
Okmulgee, OK, Okmulgee Regional, RNAV (GPS) RWY 18, Amdt 1
Okmulgee, OK, Okmulgee Regional, Takeoff Minimums and Obstacle DP, Amdt 1
Watonga, OK, Watonga Regional, RNAV (GPS) RWY 17, Orig
Watonga, OK, Watonga Regional, VOR/DME–A, Amdt 3
Watonga, OK, Watonga Regional, GPS RWY 17, Orig, CANCELLED
Watonga, OK, Watonga Regional, Takeoff Minimums and Textual DP, Amdt 1
New Castle, PA, New Castle Muni, RNAV (GPS) RWY 5, Amdt 1
New Castle, PA, New Castle Muni, RNAV (GPS) RWY 23, Amdt 1
Pittsburgh, PA, Allegheny County, VOR–A, Orig
Pittsburgh, PA, Allegheny County, Takeoff Minimums and Obstacle DP, Amdt 8
Pittsburgh, PA, Allegheny County, RNAV (GPS) RWY 5, Amdt 2, CANCELLED
Pittsburgh, PA, Allegheny County, VOR RWY 5, Amdt 10, CANCELLED
North Kingstown, RI, Quonset State, ILS OR LOC RWY 16, Amdt 9
North Kingstown, RI, Quonset State, RNAV (GPS) RWY 16, Orig
North Kingstown, RI, Quonset State, RNAV (GPS) RWY 34, Orig
North Kingstown, RI, Quonset State, GPS RWY 34, Amdt 1A, CANCELLED
Lexington-Parsons, TN, Beech River Rgnl, Takeoff Minimums and Obstacle DP, Orig
Austin, TX, Lakeway Airpark, RNAV (GPS) RWY 16, Orig
Austin, TX, Lakeway Airpark, VOR/DME–A, Amdt 1
Austin, TX, Lakeway Airpark, GPS RWY 16, Orig-B, CANCELLED
Bonham, TX, Jones Field, RNAV (GPS) Rwy 35, Orig
Dallas, TX, Addison, Takeoff Minimums and Obstacle DP, Amdt 5
Dallas, TX, Dallas Love Field, Takeoff Minimums and Obstacle DP, Amdt 15

Dallas-Fort Worth, TX, Dallas-FT Worth Intl, CONVERGING ILS RWY 13R, Amdt 6A
Dallas-Fort Worth, TX, Dallas-FT Worth Intl, ILS OR LOC RWY 13R, Amdt 7A
Dallas-Fort Worth, TX, Dallas-FT Worth Intl, RNAV (GPS) Y RWY 13R, Amdt 1A
Dallas-Fort Worth, TX, Dallas-FT Worth Intl, RNAV (GPS) Y RWY 31R, Amdt 1A
Dallas-Fort Worth, TX, Dallas-FT Worth Intl, RNAV (RNP) Z RWY 13R, Orig-A
Dallas-Fort Worth, TX, Dallas-FT Worth Intl, RNAV (RNP) Z RWY 31L, Orig-A
Fort Worth, TX, Fort Worth Spinks, Takeoff Minimums and Obstacle DP, Amdt
Houston, TX, Pearland Rgnl, RNAV (GPS) Rwy 32, Amdt 2
Houston, TX, Pearland Rgnl, VOR–B, Amdt 1
Houston, TX, Pearland Rgnl, Takeoff Minimums and Obstacle DP, Amdt 3
Lancaster, TX, Lancaster, Takeoff Minimums and Obstacle DP, Amdt 1
Mc Kinney, TX, Collin County Regional at McKinney, Takeoff Minimums and Obstacle DP, Orig
Nacogdoches, TX, A L Mangham Jr Regional, ILS OR LOC RWY 36, Amdt 3
Logan, UT, Logan-Cache, ILS OR LOC/DME RWY 17, Orig
Lynchburg, VA, Lynchburg Rgnl/Preston Glenn Fld, ILS OR LOC RWY 4, Amdt 16
Lynchburg, VA, Lynchburg Rgnl/Preston Glenn Fld, RNAV (GPS) RWY 4, Orig
Lynchburg, VA, Lynchburg Rgnl/Preston Glenn Fld, RNAV (GPS) RWY 22, Orig
Lynchburg, VA, Lynchburg Rgnl/Preston Glenn Fld, VOR RWY 4, Amdt 12
Lynchburg, VA, Lynchburg Rgnl/Preston Glenn Fld, GPS RWY 22, Orig-B, CANCELLED
Lynchburg, VA, Lynchburg Rgnl/Preston Glenn Fld, Takeoff Minimums and Obstacle DP, Amdt 7
Manassas, VA, Manassas Rgnl/Harry P. Davis Field, Takeoff Minimums and Obstacle DP, Amdt 3
Melfa, VA, Accomack County, RNAV (GPS) RWY 3, Amdt 1
Melfa, VA, Accomack County, RNAV (GPS) RWY 21, Orig
Melfa, VA, Accomack County, Takeoff Minimums and Obstacle DP, Amdt 1
Tappahannock, VA, Tappahannock-Essex County, RNAV (GPS) RWY 10, Orig
Tappahannock, VA, Tappahannock-Essex County, RNAV (GPS) RWY 28, Orig
Tappahannock, VA, Tappahannock-Essex County, Takeoff Minimums and Obstacle DP, Orig
Fond Du Lac, WI, Fond Du Lac County, LOC/DME RWY 36, Orig
Fond Du Lac, WI, Fond Du Lac County, SDF RWY 36, Amdt 6B, CANCELLED

Effective 20 DEC 2007

Kobuk, AK, Kobuk, RNAV (GPS) RWY 9, Orig
Kobuk, AK, Kobuk, RNAV (GPS) RWY 27, Orig
Kobuk, AK, Kobuk, Takeoff Minimums and Obstacle DP, Orig

The FAA published the following Amendment in Docket No. 30567 Amdt No. 3233 to Part 97 of the Federal Aviation Regulations (Vol. 72, FR No. 172, page 51170, dated, 06 SEP 2007) Under Section 97.15 effective 25 OCT 2007, the Standard Instrument Approach Procedures listed below are hereby corrected to be effective for December 20, 2007.

Kobuk, AK, Kobuk, RNAV (GPS) RWY 9, Orig
Kobuk, AK, Kobuk, RNAV (GPS) RWY 27, Orig
Kobuk, AK, Kobuk, Takeoff Minimums and Obstacle DP, Orig

[FR Doc. E7–18335 Filed 9–19–07; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30569; Amdt. No. 3235]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective September 20, 2007. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 20, 2007.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPs, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective

dates of the SIAPs, the associated Takeoff Minimums, and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure before adopting these SIAPs, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on September 7, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

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

** * * Effective Upon Publication*

Date	State	City	Airport	FDC No.	Subject
04/19/07	MN	St Paul	St Paul Downtown Holman Fld	7/8689	ILS RWY 32, AMDT 4.
08/21/07	NY	Niagara Falls	Niagara Falls Intl	7/4069	TKOF MINS AND OBSTACLE DP, AMDT 2.
08/21/07	ME	Sanford	Sanford Regional	7/4131	TKOF MINS AND OBSTACLE DP, AMDT 2.
08/29/07	IA	Le Mars	Le Mars Muni	7/4988	TKOF MINS AND OBSTACLE DP, AMDT 1A.
08/29/07	WI	Waukesha	Waukesha County	7/4989	TKOF MINS AND OBSTACLE DP, AMDT 5.
08/29/07	OH	Waverly	Pike County	7/4990	TKOF MINS AND OBSTACLE DP, ORIG.
08/29/07	WI	Viroqua	Viroqua Muni	7/4991	TKOF MINS AND OBSTACLE DP, ORIG.
08/29/07	WI	Milwaukee	General Mitchell International	7/4992	TKOF MINS AND OBSTACLE DP, AMDT 5.
08/29/07	OK	Woodward	West Woodward	7/4993	TKOF MINS AND OBSTACLE DP, AMDT 1A.
08/29/07	TX	Bridgeport	Bridgeport Muni	7/4994	TKOF MINS AND OBSTACLE DP, AMDT 1A.
08/29/07	TX	Midland	Midland Airpark	7/4995	TKOF MINS AND OBSTACLE DP, AMDT 2A.
08/29/07	TX	Corpus Christi	Corpus Christi Intl	7/4996	TKOF MINS AND OBSTACLE DP, ORIG–A.
08/29/07	TX	Graham	Graham Muni	7/4999	TKOF MINS AND OBSTACLE DP, AMDT 2A.

Date	State	City	Airport	FDC No.	Subject
08/29/07	OH	Gallipolis	Gallia-Meigs Regional	7/5000	TKOF MINS AND OBSTACLE DP.
08/29/07	WI	Richland Center	Richland	7/5001	TKOF MINS AND OBSTACLE DP, AMDT 1.
08/30/07	GA	Cordele	Crisp County-Cordele	7/5255	NDB OR GPS RWY 10, AMDT 4B.
08/30/07	GA	Winder	Winder-Barrow	7/5258	NDB OR GPS RWY 31, AMDT 8B.
08/30/07	GA	Winder	Winder-Barrow	7/5259	LOC RWY 31, AMDT 8B.
08/30/07	GA	Winder-Barrow	Winder	7/5261	VOR/DME OR GPS–A, AMDT 9B.
08/30/07	MS	Aberdeen/Amory	Monroe County	7/5460	VOR OR GPS RWY 18, AMDT 6B.
09/04/07	AZ	Chandler	Stellar Airpark	7/5784	TKOF MINS AND OBSTACLE DP, AMDT 2.

[FR Doc. E7–18374 Filed 9–19–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9347]

RIN 1545–AY22

Corporate Estimated Tax; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations that were published in the **Federal Register** on Tuesday, August 7, 2007 (72 FR 44338) providing guidance to corporations with respect to estimated tax requirements.

DATES: This correction is effective September 20, 2007.

FOR FURTHER INFORMATION CONTACT: Timothy Sheppard at (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9347) that is the subject of this correction are under section 6655 of the Internal Revenue Code.

Need for Correction

As published, these regulations (TD 9347) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the final regulations (TD 9347), that was the subject of FR Doc. E7–14946, is corrected as follows:

On page 44347, column 1, in the preamble, under the paragraph heading ''Effect on other Documents'', paragraph 5, line 7, the language, ''rational underlying the conclusion in'' is corrected to read ''rationale underlying the conclusion in''.

LaNita Van Dyke,

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

[FR Doc. E7–18506 Filed 9–19–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9347]

RIN 1545–AY22

Corporate Estimated Tax; Correcting Amendment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations that were published in the **Federal Register** on Tuesday, August 7, 2007 (72 FR 44338) providing guidance to corporations with respect to estimated tax requirements.

DATES: This correction is effective September 20, 2007.

FOR FURTHER INFORMATION CONTACT: Timothy Sheppard at (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9347) that is the subject of this correction are under section 6655 of the Internal Revenue Code.

Need for Correction

As published, these regulations (TD 9347) contains an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

§ 1.6655–2 [Corrected]

■ 2. Section § 1.6655–2(g)(2) *Example.* is amended by removing the language ''installment period in 2008, ABC's is'' and adding the language ''installment period in 2008, ABC is'' in its place.

LaNita Van Dyke,

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

[FR Doc. E7–18504 Filed 9–19–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD–2006–OS–0209]

RIN 0720–AB02

TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2006; TRICARE Dental Program

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements section 713 of the National Defense Authorization Act for Fiscal Year 2006 (NDAA for FY06), Public Law 109–163. The rule provides eligibility for survivor benefits under the TRICARE Dental Program (TDP) to include the active duty spouse of a member who dies while on active duty for a period of more than 30 days who subsequently separates from active duty during the three-year transitional survivor period.

DATES: *Effective Date:* September 20, 2007.

ADDRESSES: TRICARE Management Activity, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Col. Gary C. Martin, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION:

I. Summary of Final Rule Provisions

Prior to section 713 of the FY 06 NDAA, a surviving spouse who is a member of the armed forces on active duty for a period of more than 30 days at the time the other active duty military member spouse dies, and who subsequently separates from active duty, was ineligible for the TRICARE Dental program (TDP) survivor benefit. The surviving active duty spouse was ineligible because he or she was not enrolled in the program at the time of the spouse's death. Active duty members are not eligible for enrollment in the TDP. There are many dual military couples in the armed forces and the authority provided by section 713 of the NDAA for FY06 directs the Department to expand the eligibility for survivor benefits under the TDP to include the active duty spouse of a member who dies while on active duty for a period of more than 30 days who subsequently separates from active duty during the three-year survivor period.

II. Review of Public Comments

We provided a 60 day comment period on the interim final rule which was published in the **Federal Register** on November 17, 2006 (71 FR 66871). We received no public comments.

III. Regulatory Procedures

Executive Order (EO) 12866

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule is not an economically significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA, thus this final rule is not subject to any of these requirements. This rule, although not economically significant under Executive Order 12866, is a significant rule under Executive Order 12866 and has been reviewed by the Office of Management and Budget. The changes set forth in this final rule involve an expansion of TRICARE benefits.

Paperwork Reduction Act

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

We have examined the impact(s) of the final rule under Executive Order 13132 and it does not have policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Dental program, Dental health, Health care, Health insurance, Military personnel.

■ For the reasons set out in the preamble, the Department of Defense amends 32 CFR part 199 as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.13 is amended by revising paragraphs (c)(3)(ii)(E)(*2*), to read as follows:

§ 199.13 TRICARE Dental Program.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(E) * * *

(*2*) *Continuation of eligibility.* Eligible dependents of active duty members while on active duty for a period of more than 30 days and eligible dependents of members of the Ready Reserve (i.e., Selected Reserve or Individual Ready Reserve, as specified in 10 U.S.C. 10143 and 10144(b) respectively), shall be eligible for continued enrollment in the TDP for up to three (3) years from the date of the member's death, if, on the date of the death of the member, the dependent is enrolled in the TDP, or is not enrolled by reason of discontinuance of a former enrollment under paragraphs (c)(3)(ii)(E)(*4*)(*ii*) and (c)(3)(ii)(E)(*4*)(*iii*) of this section, or is not enrolled because the dependent was under the minimum age for enrollment at the time of the member's death, or is not qualified for enrollment because the dependent is a spouse who is a member of the armed forces on active duty for a period of more than 30 days but subsequently separates or is discharged from active duty. This continued enrollment is not contingent on the Selected Reserve or Individual Ready Reserve member's own enrollment in the TDP. During the three-year period of continuous enrollment, the government will pay both the government and the beneficiary's portion of the premium share.

* * * * *

Dated: September 13, 2007.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4654 Filed 9–19–07; 8:45 am]

BILLING CODE 5001–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0450; FRL–8469–4]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Amendments to the Open Burning Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This SIP revision pertains to the amendments of Delaware's open burning regulation. EPA is approving this SIP revision in accordance with the Clean Air Act.

DATES: *Effective Date:* This final rule is effective on October 22, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–0450. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 21, 2007 (72 FR 34207), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of Delaware's open burning regulation (Regulation No. 1113). The formal SIP revision was submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on May 2, 2007. Other specific requirements of Delaware's open burning regulation and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving Regulation No. 1113—Open Burning as a revision to the Delaware SIP. This SIP revision was submitted on May 2, 2007.

III. Statutory and Executive Order Reviews

A. General Requirements

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 requirement, 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.*).

B. Submission to Congress and the Comptroller General

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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

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 November 19, 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, pertaining to Delaware's amendments to the open burning regulation, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 6, 2007.

William T. Wisniewski,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 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 I—Delaware

■ 2. In § 52.420, the table in paragraph (c) is amended by revising the title and entries for Regulation No. 13—Open Burning to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Regulation 1113	**Open Burning (Formerly Regulation 13)**			
Section 1.0	Purpose	04/11/07	09/20/07 [Insert page number where the document begins].	
Section 2.0	Applicability	04/11/07	09/20/07 [Insert page number where the document begins].	
Section 3.0	Definitions	04/11/07	09/20/07 [Insert page number where the document begins].	
Section 4.0	Prohibitions and Related Provisions.	04/11/07	09/20/07 [Insert page number where the document begins].	
Section 5.0	Season and Time Restrictions	04/11/07	09/20/07 [Insert page number where the document begins].	
Section 6.0	Allowable Open Burning	04/11/07	09/20/07 [Insert page number where the document begins].	
Section 7.0	Exemptions	04/11/07	09/20/07 [Insert page number where the document begins].	
*	*	*	*	*

* * * * *

[FR Doc. E7–18352 Filed 9–19–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–2882; MB Docket No. 05–67; RM–11116, RM–11342]

Radio Broadcasting Services; Clinton, Fishers, Indianapolis, and Lawrence, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal.

SUMMARY: This *Report and Order* dismisses two Counterproposals as unacceptable for consideration. In addition, this *Report and Order* upgrades Channel 230A, Station WWFT (FM), Fishers, Indiana, to Channel 230B1, reallots Channel 230B1 from Fishers to Lawrence, Indiana, as Lawrence's first local aural transmission service, and modifies Station WWFT (FM)'s license accordingly. In order to maintain local service at Fishers, the *Report and Order* reallots Channel 238B, Station WFMS (FM), from Indianapolis to Fishers, Indiana, and modifies Station WFMS (FM)'s license accordingly. To accommodate the reallotment of Channel 230B1 to Lawrence, the *Report and Order* substitutes Channel 229A for Channel 230A at Station WPFR–FM. Clinton, Indiana, and modifies Station WPFR–FM's license accordingly. The Media Bureau's Consolidated Database System (CDBS) reflects these changes.

ADDRESSES: Federal Communications Commission; 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 05–67, adopted June 27, 2007, and released June 29, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will not send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because Section 73.202(b) of the

Commission's Rules has not been amended.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–18500 Filed 9–19–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–3478; MB Docket No. 05–245; RM–111264, RM–11357]

Radio Broadcasting Services; Animas, NM; Corona de Tucson, AZ; Lordsburg, NM; Sierra Vista, Tanque Verde and Vail, AZ; and Virden, NM

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: In response to the Counterproposal filed by Cochise Broadcasting, LLC and Desert West Air Ranchers Corporation, this document reallots Channel 267C3 from Corona de Tucson to Tanque Verde, Arizona, and modifies the license of Station KKYZ to specify Tanque Verde as the community of license. To continue local service at Corona de Tucson, it reallots Channel 253A from Vail, Arizona, to Corona de Tucson, and modifies the Station KRDX license to specify Corona de Tucson as the community of license. To replace local service at Vail, it substitutes Channel 279A for Channel 279C1 at Lordsburg, New Mexico, reallots Channel 279A to Vail, and modifies the outstanding construction permit (File No. BNPH–20050609ABD) to specify operation on Channel 279A at Vail. Finally, it allots Channel 279C1 to Animas, New Mexico, and Channel 228C1 to Virden, New Mexico, as first local services. The reference coordinates for the Channel 267C3 allotment at Tanque Verde, Arizona, are 32–19–59 and 110–45–19. The reference coordinates for the Channel 253A allotment at Corona de Tucson, Arizona, are 32–55–39 and 110–37–57. The reference coordinates for the Channel 279A allotment at Vail, Arizona, are 31–58–16 and 110–35–59. The reference coordinates for the Channel 279C1 allotment at Animas, New Mexico, are 31–56–50 and 108–28–45. The reference coordinates for the Channel 228C1 allotment at Virden, New Mexico, are 32–24–12 and 108–53–59. With this action, this proceeding is terminated.

DATES: Effective September 20, 2007.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* in MB Docket No. 05–245, adopted July 30, 2007, and released July 31, 2007. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copying and Printing, Inc. 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202(b) [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Animas, Channel 279C1 and by adding Virden, Channel 228C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–18499 Filed 9–19–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–2196; MB Docket No. 05–263; RM–11269]

Radio Broadcasting Services; Church Rock and Grants, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal.

SUMMARY: This Report and Order dismisses two Counterproposals as unacceptable for consideration. In addition, this *Report and Order* reallots Channel 279C0, Station KYVA–FM, from Grants, New Mexico, to Church Rock, New Mexico, and modifies the license of Station KYVA–FM accordingly. The foregoing change of community provides the first local aural transmission service to Church Rock. The Media Bureau's Consolidated Database System (CDBS) reflects these changes.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MB Docket No. 05–263, adopted May 23, 2007, and released May 25, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will not send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because Section 73.202(b) of the Commission's Rules has not been amended.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–18495 Filed 9–19–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 661

[Docket No. FTA–2005–23082]

RIN 2132–AA90

Buy America Requirements; End Product Analysis and Waiver Procedures

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) requires the Federal Transit Administration (FTA or the Agency) to make certain changes to the Buy America requirements. This Final Rule creates a new publication process for public interest waivers to provide an opportunity for public comment; clarifies Buy America requirements with respect to microprocessor waivers; issues new provisions to permit post-award waivers; clarifies the definition of ''end products'' with regards to components, subcomponents, and major systems, and provides a representative list of end products; clarifies the requirements for final assembly of rolling stock and provides representative examples of rolling stock components; expands FTA's list of communications, train control, and traction power equipment; and updates debarment and suspension provisions to bring them into conformity with statutory amendments made by SAFETEA–LU.

EFFECTIVE DATE: The effective date of this publication is October 22, 2007.

FOR FURTHER INFORMATION CONTACT: Richard Wong, Office of the Chief Counsel, Federal Transit Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–4011 or *Richard.Wong@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 28, 2005, the Federal Transit Administration (FTA) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (70 FR 71246) that discussed several proposals mandated by SAFETEA–LU (Pub L. 109–59, August 10, 2005), and proposed to provide further clarification of existing FTA decisions on Buy America. Due to the complexity of many Buy America issues addressed in the NPRM and the divergence of opinion in important areas, FTA issued a final rule that addressed fewer subjects than addressed in the NPRM. (71 FR 14112, Mar. 21, 2006.) These more routine topics covered in the final rule included: (1) Administrative review; (2) the definition of ''negotiated procurement;'' (3) the definition of ''contractor;'' (4) repeal of the general waiver for Chrysler vans; (5) certification under negotiated procurements; (6) pre-award and post-award review of rolling stock purchases; and (7) miscellaneous corrections and clarifications to the Buy America regulations.

The Second Notice of Proposed Rulemaking (SNPRM) (71 FR 69412, Nov. 30, 2006) addressed six issues identified in the original NPRM but not covered in the initial final rule: (1) A publication process for public interest waivers to provide an opportunity for public comment; (2) a clarification of Buy America requirements with respect to microprocessor waivers; (3) new provisions to permit post-award waivers; (4) clarifications in the definition of ''end products'' with regards to (a) components and subcomponents, (b) major systems, and (c) a representative list of end products; (5) a clarification of the requirements for final assembly of rolling stock and a list of representative examples of rolling stock items; (6) expanding FTA's list of eligible communications, train control, and traction power equipment; and added a technical correction; and, an update of the debarment and suspension provisions to bring them into conformity with statutory amendments made by SAFETEA–LU.

1. Published Justification for Public Interest Waivers

In the first NPRM, FTA proposed amending 49 CFR 661.7(b) to implement the SAFETEA–LU requirement that FTA publish justifications for public interest waivers in the **Federal Register** and provide for notice and comment. The NPRM proposed to continue the current practice of posting all public interest waiver requests on FTA's Buy America Web site for public review and comment, with the additional step of publishing FTA's proposed approvals in the **Federal Register** for additional comment.

After a thorough review of the comments received in response to the NPRM, which were discussed at length in the SNPRM, FTA believed that SAFETEA–LU intended a four-step process: (1) Publish the incoming public interest waiver request on FTA's Web site for public review and comment; (2) publish FTA's proposed approvals and FTA's justification in the **Federal Register** for formal notice and comment; (3) issue a formal written decision to the applicant; and (4) post copies of the formal decision on FTA's Web site.

A. Comments Received

FTA received six comments in response to the SNPRM. All supported an expedited approach. Most supported the 30-day timeframe proposed in the SNPRM, although one commented that providing fair public notice was more essential than a rapid turnaround.

Two commenters urged FTA to publish both the incoming request and the proposed determination in the **Federal Register**. Several commenters complained that monitoring both FTA's Web site and the Federal Register Web site on a daily basis for potential waiver petitions was unduly burdensome.

One commenter to both the NPRM and SNPRM suggested that FTA not limit publication of decisions to approvals of waiver petitions. The commenter noted that lessons learned from disapprovals lead to a better understanding and application of the Buy America requirements.

B. FTA Response

FTA believes that a dual **Federal Register** publication process for both incoming requests and proposed determinations would be slow and cumbersome, jeopardizing FTA's ability to maintain a 30-day processing time. FTA believes that publication of incoming requests on FTA's Buy America Web site with simultaneous notice to trade associations such as the American Public Transportation Association (APTA) and the Community Transportation Association of America (CTAA) provides interested parties with adequate notice and opportunity to comment, and that formal publication of FTA's proposed determination and justification in the **Federal Register** meets SAFETEA–LU's notice and comment requirements. As explained in the NPRM and SNPRM, FTA believes the plain language of SAFETEA–LU and its legislative history expressly requires FTA to issue a written justification and to publish it in the **Federal Register**, and only in instances where the justification supports a waiver request. *See* 49 U.S.C. 5323(j)(3); *see also* H.R. Conf. Rep. No. 109–203, at 952 (2005). However, FTA agrees with the commenter who asked FTA to also publish denial letters, and FTA will publish both approval and denial letters on its Web site, as FTA believes that researchers and potential applicants will find both documents useful.

With regards to the concern that monitoring both FTA's Web site and the **Federal Register** for public interest waivers will be unduly burdensome, FTA has made improvements to its Web site whereby interested parties can subscribe to be notified whenever a new item is published on a specific FTA webpage, including FTA's table of its **Federal Register** publications. FTA believes that this proactive notification system will reduce, if not eliminate, the need to constantly monitor both FTA's Web site and the **Federal Register** for

waiver petitions and determination letters.

Accordingly, FTA believes the following process meets the requirements specified in SAFETEA–LU: (1) Post notification of the public interest waiver request on FTA's Web site and solicit comments on the request; (2) based on the comments received, prepare a justification that explains the rationale for approving or denying a waiver request; (3) publish the justification in the **Federal Register** for notice and comment within a reasonable time; and (4) publish the final decision on FTA's Web site regarding the waiver request, based on comments received in response to the published justification.

It should be noted that upon review of the formal comments received in response to the publication of the proposed determination and justification in the **Federal Register**, FTA may ultimately determine that a waiver is *not* in the public interest, and deny the request, despite FTA's initial determination. FTA believes that this methodology would create a total processing time of about 30 calendar days.

2. Microcomputer/Microprocessor Waivers

In the SNPRM, FTA requested comment on its proposal to implement the SAFETEA–LU requirement to ''clarify'' that any waiver of the Buy America requirements for a microprocessor, computer, or microcomputer, applies ''only to a device used solely for the purpose of processing or storing data'' and does not extend to the product or device containing a microprocessor, computer, or microcomputer.

A. Comments Received

FTA received nine comments on this issue, many of which echoed identical comments submitted in response to the initial NPRM, proposing the exclusion of input/output devices and software. Other commenters voiced objections to the current methodology of considering the cost of the microcomputer/microprocessor as domestic content for purposes of meeting the 60% domestic content requirement, suggesting that the cost of the exempted item should be excluded from the sum of the end product's domestic and non-domestic content. On the other hand, several commenters stressed that existing regulatory practices must be continued to avoid significant disruption in the industry, emphasizing that FTA was directed to ''clarify'' its existing Buy America interpretations with regard to microcomputers and microprocessors, without changing the current regulatory regime.

B. FTA Response

In FTA's attempt to clarify that the waiver applied to devices ''used solely for the purpose of processing or storing data,'' commenters misinterpreted this effort to mean that ''input/output'' facilities and software should now be excluded from the waiver's coverage. Such is not the case. Although the current version of the general waiver at 49 CFR 661.7, Appendix A, does not include the term ''input/output'' facility, FTA has interpreted the waiver to include software (''microcomputer equipment, *including software,* of foreign origin can be procured by grantees.'') (Emphasis added.) In addition, the inclusion of input/output devices under the waiver provision was used in a previous definition of a microcomputer. See 50 FR 18760, May 2, 1985 (''A basic microcomputer includes a microprocessor, storage, and *input/output facility,* which may or may not be on one chip.'') (Emphasis added.)

FTA agrees with commenters that Congress did not intend for FTA to change its current regulatory treatment of microcomputer equipment. See H.R. Conf. Rep. No. 109–203, at 952 (2005) (''In directing the Secretary to issue new regulations regarding microprocessors, computers, or microcomputers, there is no intent to change the existing regulatory treatment of software or of microcomputer equipment.'') Because SAFETEA–LU directed FTA to ''clarify,'' not alter current regulatory policy, FTA will continue to allow both software and input/output devices to be covered under the microcomputer/microprocessor waiver, provided that the waiver is limited to the device used solely for the processing or storing data. Consistent with prior FTA rulemakings and letters of determination, the waiver does not extend to an entire product or device merely because it contains a microprocessor or microcomputer, such as a laptop computer, video display monitor, farecard reader, or similar piece of hardware or equipment.

3. Post-Award Waivers

FTA sought comment in the first NPRM on its proposal to create a post-award non-availability waiver. Under FTA's current regulation, a bidder or offeror that certifies compliance with Buy America is ''bound by its original certification'' and ''is not eligible for a waiver of those requirements.'' 49 CFR 661.13(c). The NPRM's proposed language would allow grantees to request a non-availability waiver after contract award where a bidder or offeror had originally certified compliance with the Buy America requirements, but can no longer comply with its certification and contractual obligations due to commercial impossibility or impracticability.

In the SNPRM, FTA revised the provisions in the first NPRM based on responses from commenters who recommended that in the interest of consistency, FTA use the existing process for non-availability waivers set forth in 49 CFR 661.7(c). In addition, commenters suggested that FTA include a ''good faith'' element in its deliberations. FTA agreed and the SNPRM proposed that a grantee, when making a request for a post-award waiver, should provide specific evidence of a contractor's good faith when justifying the post-award waiver. This evidence would include information about the origin of the product or materials, invoices, or other relevant solicitation documents as requested and that the item to be procured cannot now be obtained domestically due to commercial impossibility or practicability. Additionally, when determining whether conditions exist to grant a post-award waiver, the SNPRM stated that FTA would consider all appropriate factors on a case-by-case basis.

A. Comments Received

FTA received four comments on the revised language. Two commenters, one a large public transit agency and one a system manufacturer concurred with the SNPRM's revised approach. The third commenter, a large transit agency, expressed concerns about validating the credibility of its supplier or contractor and the sufficiency of the evidence that needed to be submitted to FTA as part of the waiver request. The transit agency was concerned that it could be placed in a conflict of interest position or subjected to litigation if had to advocate on behalf of a given vendor. The fourth commenter, a large trade association representing transit agencies and their vendors and suppliers, opined that the consideration of other bidders or offerors should have no consideration in FTA's evaluation of post-award non-availability requests, believing that a frustrated second-lowest bidder could hold a transit agency ''economic hostage'' to a frustrated competitor who had obtained limited remaining domestic supplies through exclusive distribution agreement or other arrangement. According to the trade association, the situation would result in significant cost increases as the transit agency would be forced to

terminate its contract with the initial contractor with no effective competition to ensure reasonable pricing.

B. FTA Response

FTA believes that the language set forth in the SNPRM forms a reasonable approach. With regard to proving supplier or contractor credibility, a transit agency may reasonably rely upon a contractor's representation, as making a knowingly false claim in a Federally-funded procurement could subject a perjurious contractor to Federal criminal statutes and possible debarment from future contracting opportunities. With regard to the sufficiency of the evidence, the SNPRM stated that FTA will consider all factors on a case-by-cases basis. If FTA believes that the document submitted by a grantee or its contractor is insufficient, inadequate, or suspect, FTA may request additional information to determine whether there is sufficient evidence to justify granting a waiver.

With regard to the concerns of the third commenter that submitting a waiver request would raise conflict-of-interest issues, FTA believes that submitting a post-award waiver request would not constitute advocacy on behalf of a given vendor, but rather, constitutes advocacy on behalf of the transit agency itself, which would be forced into reopening a bid or otherwise encounter performance delays without a post-award waiver.

FTA does not agree with the comments from the fourth commenter that the status of other bidders should be excluded from consideration. The Buy America status of other responsive bidders, including losing bidders, is materially relevant, particularly where the winning bidder is seeking to substitute non-domestic materials for domestic ones. The intent of Buy America is to safeguard American jobs by requiring that steel, iron, and manufactured goods used in an FTA-funded project are produced in the United States—not to protect a particular contractor or supplier against the vagaries of the marketplace. In deciding whether to grant a post-award waiver, therefore, FTA will consider the status of other bidders or offerors who are Buy America compliant and can furnish domestic material or products on an FTA-funded project. Concluding otherwise would violate the legislative intent of Buy America.

With regard to the commenter's concern that a losing bidder offering American-made products could hold the purchaser economic hostage and charge extortionary rates, FTA acknowledges that it has the authority to grant a cost-differential waiver if the price of acquiring a domestic product would increase the cost of the overall contract to the transit agency by more than 25 percent. Because the SNPRM stated that FTA would consider ''all appropriate factors on a case-by-case basis'' in deciding whether to grant a post-award waiver, FTA believes it would be appropriate to take the reasonableness of any cost differential into account when deciding whether to grant a waiver request. Whether the 25 percent cost differential would apply to the cost of the non-available domestic product or to the cost of the overall contract is a factor FTA would consider on a case-by-case basis, depending upon the significance of the product to the overall contract.

4. ''End Products''

SAFETEA–LU directed FTA to define the term ''end product,'' and in defining the term, FTA is to ''address the procurement of systems under the definition to ensure that major system procurements are not used to circumvent the Buy America requirements.'' In addition, SAFETEA–LU directed FTA to develop a list of representative end products that are subject to Buy America requirements.

4a. Defining ''End Product'' Under a Shift and Non-Shift Approach

FTA's initial NPRM sought comments on two alternative definitions of the term ''end product.'' The first proposed definition came from FTA's current, long-standing practice whereby the end product is the deliverable item specified by the grantee in the third party contract. Under this ''shifting'' methodology, the same item could be an end-product, a component, or a subcomponent, depending upon the deliverable specified in the third party contract, with applicable Buy America requirements attaching based on an item's characterization. Applying this shifting approach, FTA's first proposed definition stated: ''End product means any item subject to 49 U.S.C. 5323(j) that is to be acquired by a grantee, as specified in the overall project contract.''

FTA's second proposal was to base the definition of ''end product'' on that found in the Federal Acquisition Regulation (FAR) at 48 CFR part 25 implementing the Buy American Act, 41 U.S.C. 10a–10d. Under this definition, end products do not shift and components and subcomponents retain their designation. FTA's second proposed definition for this ''non-shift approach'' stated: ''End product means any article, material, supply, or system, whether manufactured or unmanufactured, that is acquired for public use under a federally funded third party contract.'' To that point, FTA created a list of representative end products that was included in the SNPRM.

Based on its analysis and review of the comments received in response to the first NPRM, FTA concurred with the majority of commenters who recommended that FTA adopt the second ''non-shift'' proposal in the SNPRM, finding that such an approach would (1) foster reasonable predictability and stability in the transit business community, (2) enable offerors and bidders to price proposals more accurately, and (3) allow transit agencies to obtain better prices.

Several commenters opposed the NPRM's ''non-shift'' approach, stating that keeping track of aftermarket rolling stock parts would not only prove to be an impossible burden for grantees, it would also discourage parts suppliers from developing an aftermarket support structure within the United States, potentially increasing the lead time for the purchase of replacement parts. These concerns were based on the assumption that FTA would treat replacement parts under the rolling stock standard (*i.e.*, where sixty percent of the subcomponents of a component, by cost, must be domestic, but forty percent may be foreign-sourced). To address the concerns of these commenters, the SNPRM proposed to treat rolling stock replacement parts under the simpler ''manufactured products'' standard in 49 CFR 661.5, which requires that a component be manufactured domestically, without the need to document the origin of each of its subcomponents. As FTA's Buy America regulation currently states, a component of a manufactured product ''is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.'' 49 CFR 661.5(d)(2).

The SNPRM's proposal to apply the ''manufactured product'' standard to replacement parts is very different from the current regulation that applies the rolling stock standard to such parts. Under the current regulation, a component of rolling stock, in order to be Buy America-compliant, must consist of at least 60% domestic subcomponents. A rolling stock component, if purchased later as a replacement part, shifts upwards to become an ''end product'' and its subcomponents shift to become ''components'' and must consist of 100% domestic, even if the original subcomponent was part of the vehicle's

allowable 40% non-domestic content. The SNPRM proposed that replacement components would retain their characterization as ''components'' throughout the life of the vehicle and their replacements would not shift upwards to become ''end products.'' In addition, replacement components would be subject to the ''manufactured products'' standard with regard to the origin of its subcomponents.

By applying the ''manufactured products'' standard to replacement components, suppliers would still be required to manufacture replacement components in the United States, thereby preserving a domestic manufacturing base while at the same time recognizing the global marketplace with regard to the procurement of subcomponents. In addition, applying the ''manufactured products'' test to the acquisition of replacement components relieves manufacturers and buyers of the burden of documenting country-of-origin records for an endless number of possible subcomponents, so long as the component itself is manufactured in the United States. FTA believed the SNPRM's approach provided limited relief from current practices and was not likely to disrupt the supply industry.

A more significant change in the SNPRM pertained to the replacement of subcomponents. Under the current regulation, if a purchaser replaces rolling stock subcomponents, those replacement parts also shift upwards to become ''end products'' (*i.e.*, the item must be American-made). The SNPRM proposed that replacement parts would be subject to the same Buy America requirements that applied to the original part—subcomponents would not shift upwards to become ''end products'' but would instead remain ''subcomponents'' throughout the life of the vehicle. Albeit such a rule might lead to an increase in the level of foreign-sourced replacement parts, FTA believed that the benefits of consistency, stability, and favorable price structures in the transit industry and would outweigh any disadvantages to domestic suppliers.

A. Comments Received

The four parties who submitted comments on this issue represented a broad cross-section of docket commenters—one of the nation's largest public transit agencies, a manufacturer of an integrated fare collection system, a manufacturer of rolling stock, and a large industry trade association. All four endorsed FTA's proposal.

The SNPRM, the trade association noted, ''will provide the market predictability the transit industry needs to maintain stability and reasonable pricing,'' adding that permanently fixing the status of a part as components or sub-components for all future purposes would allow agencies to procure proven replacement parts without non-productive recordkeeping The transit agency expressed similar concerns that maintaining records of rolling stock end products, components, and end products throughout the service life of the vehicle would have been an ''unbearable burden.'' The fare collection system manufacturer concurred without additional comment, while the rolling stock manufacturer stressed that components ''should always be manufactured in the U.S. regardless of whether the component was purchased as part of an end product or separately as a service part for an end product.''

B. FTA Response

Based on the comments received, FTA is adopting the SNPRM's non-shift approach. Under the current regulation, a procurement for a replacement part, whether the part was previously classified as a component or a sub-component, is treated as a procurement for an ''end product.'' Under the new approach, procurements for replacement parts, whether components or subcomponents of the original end product, would retain their characterization and the requirements applicable to manufactured products would apply. This new approach would apply consistently to the procurement of replacement parts for rolling stock as well as to manufactured products.

This approach to replacement parts is supported by the trade association's comments that the SNPRM's approach would ''provide the market predictability the transit industry needs to maintain stability and reasonable pricing,'' and that ''fixing their status as components or sub-components for all future purposes will allow agencies to procure replacement parts without non-productive record keeping.'' For rolling stock components, FTA recognizes that the illustrative list of ''typical'' rolling stock components in Appendices B and C to 49 CFR 661.11 will assist procurement officers in identifying components. For manufactured products, the contract or the bid proposal would govern the hierarchy of components and subcomponents.

In addition, the classification of ''components'' and ''subcomponents'' would not only apply to the procurement of items purchased as part of the vehicle's original equipment, but would apply consistently to the same item if purchased as an aftermarket accessory. To illustrate, under the present regulation, a bicycle rack is treated as a ''component'' if specified in a contract for the purchase of a new bus, but is treated as an ''end product'' if subsequently purchased as an aftermarket accessory or as part of a vehicle rehabilitation or retrofit. FTA believes that the same Buy America rules should apply regardless of when the bicycle rack is purchased, *i.e.*, a bicycle rack will be treated as a component and must comply with the manufactured products standard. This approach will lead to consistency in the manufacturing of components and will greatly simplify the procurement process for transit agencies and their suppliers.

In the NPRM, FTA considered an approach that would have permitted the replacement of non-domestic components and subcomponents with identical products of non-domestic manufacture. But due to comments from transit agencies that maintaining country-of-origins records for every component and subcomponent throughout a vehicle's useful service life was too great of a recordkeeping burden, FTA is not adopting this approach.

FTA believes that the benefits of the non-shift approach to the procurement of replacement parts outweigh any potential impact on replacement parts manufacturers. FTA finds it noteworthy that despite publication of the SNPRM and a request for data in the February public meeting, FTA received no comments to the docket from domestic suppliers of replacement subcomponents that quantified any adverse economic effects, particularly since the SNPRM would have subjected them to potential foreign competition.

FTA believes that adopting the non-shift approach will benefit transit agencies in their direct procurement of replacement parts, and lead to additional cost-savings to transit agencies and component manufacturers in the procurement of subcomponents. The non-shift approach will also provide consistency and stability with regard to the identity of components and subcomponents, eliminating the distinctions between the procurement of rolling stock and manufactured product replacement parts, and different procurement standards for replacement parts and aftermarket products. Transit agencies will be able to procure replacement parts from the original part manufacturers, purchasing agents will find it easier to determine the applicable Buy America rules when attempting to procure replacement parts, and opening the market to foreign and domestic sources will guarantee favorable price

structures in the transit industry and cost savings to the American taxpayer.

4b. ''System'' as an ''End Product''

SAFETEA–LU requires that ''the procurement of systems'' be addressed ''to ensure that major system procurements are not used to circumvent the Buy America requirements.'' The NPRM sought comment on whether FTA should continue its longstanding practice of including ''systems'' as definable end products. Furthermore, FTA sought comment on a proposed definition of ''system'' which was based on the ''functional test'' for interconnected systems from the Harmonized Tariff Schedule of the United States (HTSUS), 19 U.S.C. 1202, heading 8474, used in customs law. The NPRM proposed to define ''system'' as ''a machine, product, or device, or a combination of such equipment, consisting of individual components, whether separate or interconnected by piping, transmission devices, electrical cables or circuitry, or by other devices, which are intended to contribute together to a clearly defined function.''

Although many commenters expressed concerns that manufacturers could potentially abuse the definition of ''system'' to incorporate a large degree of non-domestic subcomponents into a single ''end product'' procurement, a majority of commenters encouraged FTA to continue its longstanding practice of including a ''system'' as a definable end product. Furthermore, FTA noted that SAFETEA–LU only required FTA to develop a rule to ''ensure that major system procurements are not used to circumvent the Buy America requirements,'' and did not expressly seek to prohibit the designation of systems as end products. Rather, SAFETEA–LU instructed FTA to develop a rule that would cure potential abuses, without eliminating system procurements or drastically changing FTA's long-standing Buy America practices.

FTA received many comments offering alternatives to the NPRM's proposed definition of ''system.'' Some commenters suggested FTA should consider whether performance warranties apply to an integrated system; whether products perform on an integrated basis with other products in a system, or are operated independently of associated products in the system; or whether transit agencies routinely procure a product separately (other than as replacement or spare parts). Based on these comments, FTA rewrote the SNPRM's definition of ''system'' to incorporate these criteria.

A. Comments Received

Five commenters responded to FTA's proposal. Four were generally appreciative of FTA's approach, while one, a transit vehicle manufacturer, found the concept ''confusing and unnecessary,'' and urged a more concise definition and a full listing of end products. A large transit agency supported FTA's definition, proposing that FTA add a ''minimum set of components and interconnections'' factor to the criteria. A large industry trade association, while appreciative of FTA's efforts, commented that the SNPRM ''fails to provide necessary guidance to the industry'' and stated that the list of characteristics should be expanded, lest the absence of one characteristic be seen as determinative. The commenter added that the definition should address what types of systems would not be eligible for consideration as end products. A manufacturer of a fare collection system responded to the trade association's comments, stating that the trade association's members were unable to achieve consensus on this issue and that because the trade association was unable to propose clear product-specific categories as an alternative definition to FTA's approach, FTA should instead use principles in performing its analysis.

B. FTA Response

Based on the comments received and on SAFETEA–LU's statutory language and legislative history, FTA is retaining the SNPRM's definition of a ''system'' and will add the term ''system'' to the definition of ''end product.'' FTA believes the definition proposed in the SNPRM and the new illustrative criteria will protect against the bundling of unrelated independent products into a ''super system'' that would undermine the principles of Buy America. Most importantly, as FTA explained in the SNPRM, FTA is willing to carefully review major system procurements to determine whether an integrated system actually exists, and, if so, which items constitute the system. This review process will further serve to avoid the circumvention of Buy America requirements.

FTA believes a fare collection system, in toto, meets the definition of an ''end product.'' FTA reached this conclusion in a 1994 and 2002 decision involving the Massachusetts Bay Transportation Authority (MBTA), and a 1995 decision involving the Tri-County Metropolitan District of Oregon. In these three decisions FTA cited 49 CFR § 661.11(s) in defining ''end product'' as any item procured by a grantee as specified in the overall project contract. Furthermore, FTA believes that the fare collection system at issue in its 2002 determination would have met the SNPRM's definition of ''system:'' the warranty clause referred to a single end product, *i.e.*, an automated fare collection system; the automated fare collection system was the subject of a single procurement whereby the manufactured ''end product'' was functionally different than that which would have resulted from a mere assembly of elements or materials; and most importantly, the individual parts performed on an integrated basis with other parts of the system.

Under FTA's Buy America current methodology, if a purported end product is too large, *i.e.*, composed of what FTA traditionally considers as separate ''end products'' such as structures, vehicles, fare collection equipment, etc., FTA will break it down into separate end products. FTA's willingness to do this in previous requests to evaluate the characterization of a turnkey rail project as a ''system'' should allay the fears of commenters that an end product system could be so large, and incorporate so many different levels of equipment such as stations, track, vehicles, fare collection equipment, etc., that Buy America requirements could be circumvented.

FTA remains aware that a single large-scale procurement could conceivably contain multiple end products, each of which must independently meet the requirements of Buy America. But at the same time FTA also recognizes that various elements may be integrated into a single system. FTA is aware of the developing trend towards systems procurements and the potential circumvention of Buy America requirements, and will therefore exercise heightened scrutiny in this area, using the new criteria. FTA notes, however, that the criteria are illustrative rather than determinative, and that lacking one of the criteria would not necessarily result in the automatic disqualification of a ''system.''

4c. Representative List of End Products

SAFETEA–LU directed FTA to develop a ''representative list'' of end products. FTA sought comment on a proposed list of representative end products in the first NPRM, and as FTA explained then, the proposed list was not meant to be all-inclusive, instead describing general ''representative'' categories of end products consistent with the legislation.

A. Comments Received

FTA received five comments on this issue. Of these, two commenters concurred with FTA's approach. One commenter stated that FTA's proposed representative list was ''too abbreviated and inconsistent,'' recommending that FTA issue a more extensive or comprehensive list and subjecting that list for public comment before publishing it as a Final Rule. Another commenter representing a coalition of manufacturers provided a list of end products that it believed should be added to the representative list, stating that products identified on the list should retain their status as end products, even if incorporated into a new system. One commenter, an elevator manufacturer, sought clarification that the adjective ''mobile'' in the representative list of manufactured products applied to lifts, hoists, and elevators that were movable and not part of a facility's permanent infrastructure.

B. FTA Response

FTA agrees with the commenters who recommended FTA implement a ''representative'' list of end products for two reasons: First, SAFETEA–LU directed the Secretary to ''develop a list of *representative* items that are subject to the Buy America requirements'' (emphasis added). By use of the term ''representative'' rather than ''comprehensive,'' FTA believes that Congress did not intend that the list be exhaustive. Second, FTA agrees that it would be unrealistic and unnecessary to develop a comprehensive list and keep it constantly updated as some commenters suggested.

FTA believes it is impractical to attempt to produce an exhaustive comprehensive list of every conceivable end product, component, and subcomponent in the transit industry. The comprehensive lists offered by commenters to the NPRM and SNPRM, which were often very lengthy, highly detailed, and seldom uniform, illustrate the difficulty of creating such a list. One commenter stated that the suggested lists of end products were not based upon the development of reasonable governing principles, but rather, ''by parochial interests that are focused literally on a product by product basis.'' That commenter recommended that FTA design its regulations around principles that can be fairly and impartially applied on a consistent basis in a technologically complex and constantly evolving environment.

FTA believes that a more practical approach is to issue a representative list that is not meant to be all-inclusive and to rely upon basic governing principles to address future deliberations. An example of this practical approach are the representative lists of typical bus and rail car components found in Appendices B and C to 49 CFR 661.11. Manufactured products not enumerated on those component lists can be analyzed within the context of other items on those lists, using governing principles. FTA's representative list of ''end products'' is similarly reflective of the broad scope of transit procurements and new end products can be similarly assessed.

With regard to the applicability of the term ''mobile,'' FTA intended for it to apply to all portable or moveable lifts, hoists, and elevators. FTA did not intend that permanently affixed lifts, hoists, and elevators would be considered as ''end products.'' Rather, they will continue to be considered components of the larger facility, which itself could constitute the ''end product.''

5. Definition of ''Final Assembly''

In the first NPRM, FTA sought comment on its proposal to amend the definition of ''final assembly'' in 49 CFR part 661 for rolling stock procurements by incorporating the minimum requirements for final assembly as outlined in FTA's March 18, 1997, Dear Colleague letter, C–97–03, which Congress implemented through section 3035 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178).

Several commenters recommended several changes to the NPRM's proposed definition, suggesting that it be made consistent with the descriptions of incorporation and final assembly for rail cars and buses in 49 CFR 661.11(b) and (c). FTA concurred with these commenters, agreeing that the definition of final assembly should refer back to 49 CFR 661.11(b) and (c) for the bus and rail car components that must be incorporated into the end product at the final assembly location.

FTA also agreed with a commenter who recommended that language from the March 18, 1997, Dear Colleague letter regarding FTA determinations of compliance be added to the ''final assembly'' provisions.

A. Comments Received

Although two transit agencies concurred with FTA's approach without providing substantive comments, the proposal was opposed by five rolling stock manufacturers, a large industry trade association, a consortium of suppliers, and a consultant, all of whom submitted lengthy comments to the SNPRM describing their opposition. These commenters pointed out that the Dear Colleague letter has been successfully implemented for the past ten years, and that any changes could create confusion for manufacturers and grantees. One commenter noted that the Dear Colleague letter reflected extensive input from industry participants. Vehicle manufacturers stated that they had made long-term operational and investment decisions based on existing law and guidance, and changing policy would be ''extremely onerous and harmful to manufacturers that currently comply with existing laws.'' Another commenter warned that adoption of the SNPRM's language would have ''unintended consequences'' on an ''already fragile bus industry.''

Finally, commenters pointed out that the Dear Colleague letter's definition of ''final assembly'' had been acknowledged and memorialized by Congress in section 3035 of TEA–21, and Congress did not indicate any direction for FTA to alter the current definition of final assembly.

B. FTA Response

FTA finds the commenters persuasive. Not only does the Dear Colleague letter reflect widespread industry understanding of the final assembly process, it is a long-standing precedent that reflects industry input and consensus and has been recognized by Congress as an acceptable standard. Therefore, FTA is withdrawing the proposed language in the SNPRM and will instead continue to implement the terms of the March 18, 1997, Dear Colleague letter, with a few minor additions to reflect industry practices that have taken effect after the 1997 Dear Colleague letter was issued, such as the construction of bus shells and the installation of locomotive engines in passenger railcars.

6. Communication, Train Control, and Traction Power Equipment

FTA sought comment on three substantive proposals to the Buy America requirements for rolling stock components in the NPRM. In the first of these proposals, FTA sought comment on whether it should continue to find that the items of communication equipment listed in 49 CFR 661.11 include wayside equipment, *i.e.*, communication equipment that is not in or on a vehicle, but on the adjacent tracks or right-of-way. FTA also sought comment on whether the items of train control, communication, and traction power equipment listed in 49 CFR 661.11(t), (u), and (v) should be deleted

and whether any new items should be added to these lists to reflect new technology. Finally, FTA sought comment on whether the term ''communication equipment'' should be limited to equipment whose primary function is communication ''with or between people'' or whether it should be expanded to include a ''machine-to-machine'' interface.

Based on comments received in response to the NPRM, FTA determined that the rolling stock requirements for communications equipment would continue to apply to wayside equipment. One commenter recommended deleting several items from the proposed lists of train control, communication, and traction power equipment, but several more commenters suggested the addition of items to the lists, which was reflected in the SNPRM. With regard to the expansion of the term ''communication equipment'' to include machine-to-machine interactions, FTA noted in the SNPRM that modern communication networks frequently support both capabilities (*i.e.*, human to human interaction and machine-to-machine interface) and it would be difficult in those situations to determine which components of the communication equipment was supporting one purpose or the other. Moreover, FTA's review of prior Buy America decisions involving communication equipment supported these conclusions and FTA declined to make such a distinction in the SNPRM. However, the SNPRM stated that FTA will continue to carefully scrutinize, on a case-by-case basis, whether technology may properly be characterized as ''communication equipment'' within the meaning of the rolling stock provisions of 49 U.S.C. 5323(j) and 49 CFR 661.11.

A. Comments Received

Two of the three commenters to the SNPRM concurred with FTA's approach. One commenter, a large transit agency, believed that further modification was necessary to reflect current technology and practices—namely, that propulsion systems and cab display should be added to the list of traction power equipment.

B. FTA Response

FTA notes that several commenters recommended that aluminum composite conducting rail, otherwise known as Bimetallic Power Transmission (BPTS) Equipment, which is a combination of an aluminum conductor and a stainless steel abrasion-resistant cap, be added to the list of traction power equipment in 49 CFR 661.11(v). However, FTA's current regulation at 49 CFR 661.11(w) states that ''[t]he power or third rail is not considered traction power equipment and is thus subject to the requirements of 49 U.S.C. 5323(j) and the requirements of 49 CFR 661.5.''

FTA believes that these recommendations go beyond the scope of the present rulemaking. Currently, all power or third rails, regardless of whether made primarily from aluminum, steel, or some other material, is excluded from the definition of ''traction power equipment'' and instead is subject to 49 CFR 661.5. If the rail is made of steel or iron, the product must comply with 49 CFR 661.5(c). If BPTS third rail is not made primarily of steel, it would be treated as a manufactured product under 49 CFR 661.5(d). In order to provide a competitive and level playing field, FTA is interpreting the commenters' recommendations as a request to classify power or third rails as traction power equipment, whether made of steel, aluminum, or some other material. This would require a Congressional action to exclude steel and iron contact rail from the domestic manufacturing requirements of 661.5(c), which is beyond FTA's authority in this rulemaking.

7. Statutory Update

The SNPRM proposed to amend the debarment and suspension provisions in 49 CFR 661.18 to incorporate a reference to SAFETEA–LU, replacing the existing reference to the Intermodal Surface Transportation Efficient Act of 1991 (ISTEA).

A. Comments Received

Commenters were unanimous in their support of the amendment.

B. FTA Response

FTA is adopting the amendment without change. FTA is also amending the statutory references to section 165 of the Surface Transportation Assistance Act of 1982 in 49 CFR 661.6 and 661.12 and replacing them with references to the current Buy America requirements at 49 U.S.C. 5323(j). In addition, FTA is amending the title of 49 Part 661 to remove the reference to the Surface Transportation Assistance Act of 1982 so that the title will simply read, ''Buy America Requirements.''

II. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is authorized under SAFETEA–LU (Pub. L. 109–59), which amended Section 5323(j) and (m) of Title 49, United States Code and required FTA to revise its regulations with respect to Buy America requirements.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This final rule is also nonsignificant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, Feb. 26, 1979). This final rule imposes no new compliance costs on the regulated industry; it merely clarifies terms existing in the Buy America regulations and adds terms consistent with SAFETEA–LU.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not include any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze regulations and proposals to assess their impact on small businesses and other small entities to determine whether the rule or proposal will have a significant economic impact on a substantial number of small entities. This final rule imposes no significant new costs on small entities, and in fact, is expected to reduce costs by eliminating specific recordkeeping burdens. Therefore, FTA certifies that this proposal does not require further analysis under the Regulatory Flexibility Act.

F. Unfunded Mandates Reform Act of 1995

This final rule does not propose unfunded mandates under the Unfunded Mandates Reform Act of 1995. If the proposals are adopted into a final rule, it will not result in costs of $100 million or more (adjusted annually for inflation), in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

G. Paperwork Reduction Act

This final rule proposes no new information collection requirements.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this final rule.

J. Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

List of Subjects in 49 CFR Part 661

Grant programs—transportation, Public transportation, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, part 661 of the Code of Federal Regulations is amended as follows:

PART 661—BUY AMERICA REQUIREMENTS

■ 1. The authority citation for part 661 is amended to read as follows:

Authority: 49 U.S.C. 5323(j) (formerly sec. 165 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424); as amended by sec. 337, Pub. L. 100–17; sec. 1048, Pub. L. 102–240; sec. 3020(b), Pub. L. 105–178; and sec. 3023(i) and (k), Pub. L. 109–59); 49 CFR 1.51.

■ 2. The heading for part 661 is revised to read as set forth above.

§ 661.1 [Amended].

■ 3. Amend § 661.1 by removing ''Federal Mass Transit Act of 1964, as amended'' and adding in its place ''49 U.S.C. 5323(j)''.

■ 4. Revise § 661.3 to read as follows:

§ 661.3 Definitions.

As used in this part:

Act means the Federal Public Transportation Law (49 U.S.C. Chapter 53).

Administrator means the Administrator of FTA, or designee.

Component means any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into the end product at the final assembly location.

Contractor means a party to a third party contract other than the grantee.

End product means any vehicle, structure, product, article, material, supply, or system, which directly incorporates constituent components at the final assembly location, that is acquired for public use under a federally-funded third-party contract, and which is ready to provide its intended end function or use without any further manufacturing or assembly change(s). A list of representative end products is included at Appendix A to this section.

FTA means the Federal Transit Administration.

Grantee means any entity that is a recipient of FTA funds.

Manufactured product means an item produced as a result of the manufacturing process.

Manufacturing process means the application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end product functionally different from that which would result from mere assembly of the elements or materials.

Negotiated procurement means a contract awarded using other than sealed bidding procedures.

Rolling stock means transit vehicles such as buses, vans, cars, railcars, locomotives, trolley cars and buses, and ferry boats, as well as vehicles used for support services.

System means a machine, product, or device, or a combination of such equipment, consisting of individual components, whether separate or interconnected by piping, transmission devices, electrical cables or circuitry, or by other devices, which are intended to contribute together to a clearly defined function. Factors to consider in determining whether a system constitutes an end product include: Whether performance warranties apply to an integrated system (regardless of whether components are separately warranteed); whether products perform on an integrated basis with other products in a system, or are operated independently of associated products in the system; or whether transit agencies routinely procure a product separately (other than as replacement or spare parts).

United States means the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Appendix A to § 661.3—End Products

The following is a list of representative end products that are subject to the requirements of Buy America. This list is representative, not exhaustive.

(1) *Rolling stock end products:* All individual items identified as rolling stock in § 661.3 (*e.g.*, buses, vans, cars, railcars, locomotives, trolley cars and buses, ferry boats, as well as vehicles used for support services); train control, communication, and traction power equipment that meets the definition of end product at § 661.3 (*e.g.*, a communication or traction power system).

(2) *Steel and iron end products:* Items made primarily of steel or iron such as structures, bridges, and track work, including running rail, contact rail, and turnouts.

(3) *Manufactured end products:* Infrastructure projects not made primarily of steel or iron, including structures (terminals, depots, garages, and bus shelters), ties and ballast; contact rail not made primarily of steel or iron; fare collection systems; computers; information systems; security systems; data processing systems; and mobile lifts, hoists, and elevators.

§ 661.6 [Amended]

■ 5. Amend § 661.6 as follows:

■ a. Remove ''Certificate of Compliance With Section 165(a)'' and add in its place ''Certificate of Compliance with Buy America Requirements'' and remove ''section 165(a) of the Surface Transportation Assistance Act of 1982, as amended'' and add in its place ''49 U.S.C. 5323(j)(1)''.

■ b. Remove ''Certificate for Non-Compliance with Section 165(a)'' and add in its place ''Certificate of Non-Compliance with Buy America

Requirements'', remove ''section 165(a) of the Surface Transportation Assistance Act of 1982, as amended'' and add in its place ''49 U.S.C. 5323(j)'', and remove ''section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act of 1982'' and add in its place ''49 U.S.C. 5323(j)(2)''.

■ 6. Amend § 661.7 as follows:

■ a. In paragraph (a), remove ''Section 165(b) of the Act'' and add in its place ''Section 5323(j)(2) of Title 49 United States Code'' and remove ''section 165(a)'' and add in its place ''49 U.S.C. 5323(j)(1)''.

■ b. Revise paragraph (b);

■ c. Amend paragraph (c) by removing ''section 165(b)(2) of the Act'' and adding in its place ''49 U.S.C. 5323(j)(2)'' and removing ''section 165(a)'' and adding in its place ''49 U.S.C. 5323(j)'';

■ d. Add a new paragraph (c)(3);

■ e. Amend paragraph (e) by removing ''section 165(b) of the Act'' and adding in its place ''49 U.S.C. 5323(j)(2)'';

■ f. Amend paragraph (f) by removing ''section 165(b)(3) of the Act'' and adding in its place ''49 U.S.C. 5323(j)(2)(C)''; and

■ g. Amend Appendix A to § 661.7 by removing paragraphs (b) and (c) and adding new paragraph (b).

The revisions and addition read as follows:

§ 661.7 Waivers.

* * * * *

(b) Under the provision of 49 U.S.C. 5323(j)(2)(A), the Administrator may waive the general requirements of 49 U.S.C. 5323(j)(1) if the Administrator finds that their application would be inconsistent with the public interest. In determining whether the conditions exist to grant this public interest waiver, the Administrator will consider all appropriate factors on a case-by-case basis, unless a general exception is specifically set out in this part. When granting a public interest waiver, the Administrator shall issue a detailed written statement justifying why the waiver is in the public interest. The Administrator shall publish this justification in the **Federal Register**, providing the public with a reasonable time for notice and comment of not more than seven calendar days.

(c) * * *

(3) After contract award, the Administrator may grant a non-availability waiver under this paragraph, in any case in which a bidder or offeror originally certified compliance with the Buy America requirements in good faith, but can no longer comply with its certification. The Administrator will grant a non-availability waiver only if the grantee provides sufficient evidence that the original certification was made in good faith and that the item to be procured cannot now be obtained domestically due to commercial impossibility or impracticability. In determining whether the conditions exist to grant a post-award non-availability waiver, the Administrator will consider all appropriate factors on a case-by-case basis.

* * * * *

Appendix A to § 661.7—General Waivers

* * * * *

(b) Under the provisions of § 661.7 (b) and (c) of this part, a general public interest waiver from the Buy America requirements applies to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data.

* * * * *

■ 7. Amend § 661.9(a) by removing ''section 165(b)(3) of the Act'' and ''section 165(b)(3)'' and adding in their place ''49 U.S.C. 5323(j)(2)(C)''.

■ 8. Amend § 661.11 as follows:

■ a. Remove and reserve paragraph (s).

■ b. Add paragraphs (t)(14) through (t)(22), (u)(18) through (u)(30), and (v)(28) through (30);

■ c. Amend Appendix B by adding ''Car body shells'' before ''Engines'';

■ d. Amend Appendix C by adding ''engines'' after ''Car shells'' and remove ''doors, door actuators, and controls,'' and add in its place ''doors, door actuators and controls, wheelchair lifts and ramps to make the vehicle accessible to persons with disabilities,''; and

■ e. Add a new Appendix D.

The additions read as follows:

§ 661.11 Rolling stock procurements.

* * * * *

(t) * * *

(14) Cab Signaling;

(15) ATO Equipment;

(16) ATP Equipment;

(17) Wayside Transponders;

(18) Trip Stop Equipment;

(19) Wayside Magnets;

(20) Speed Measuring Devices;

(21) Car Axle Counters;

(22) Communication Based Train Control (CBTC).

(u) * * *

(18) Antennas;

(19) Wireless Telemetry Equipment;

(20) Passenger Information Displays;

(21) Communications Control Units;

(22) Communication Control Heads;

(23) Wireless Intercar Transceivers;

(24) Multiplexers;

(25) SCADA Systems;

(26) LED Arrays;

(27) Screen Displays such as LEDs and LCDs for communication systems;

(28) Fiber-optic transmission equipment;

(29) Fiber-optic transmission equipment;

(30) Frame or cell based multiplexing equipment; 13) Communication system network elements.

(v) * * *

(28) Propulsion Control Systems;

(29) Surge Arrestors;

(30) Protective Relaying.

* * * * *

Appendix D to § 661.11—Minimum Requirements for Final Assembly

(a) *Rail Cars:* In the case of the manufacture of a new, remanufactured, or overhauled rail car, final assembly would typically include, as a minimum, installation and interconnection of the typical Rail Car Components listed in § 661.11, Appendix C, including but not limited to the following items: car bodies or shells, chassis, carbody wiring, car-borne power plants or power pick-up equipment, energy management and storage devices, articulation equipment, propulsion control equipment, propulsion cooling equipment, friction brake equipment, energy sources for auxiliary equipment and controls, heating and air conditioning equipment, interior and exterior lighting equipment, coupler equipment and coupler control system, communications equipment, pneumatic systems, electrical systems, door and door control systems, passenger seats, passenger interiors, cab interiors, destination signs, wheelchair lifts (or other equipment required to make the vehicle accessible to persons with disabilities), motors, wheels, axles, gear boxes or integrated motor/gear units, suspensions, and truck frames. Final Assembly activities shall also include the inspection and verification of all installation and interconnection work; and the in-plant testing of the rail car to verify all functions. In the case of articulated vehicles, the interconnection of the car bodies or shells shall be included as work to be performed by the manufacturer as part of vehicle delivery.

(b) *Buses:* In the case of a new, remanufactured, or overhauled bus, final assembly would typically include, at a minimum, the installation and interconnection of the typical Bus Components listed in § 661.11, Appendix B, including but not limited to the following items: car bodies or shells, the engine and transmission (drive train), axles, energy management and storage devices, articulation equipment, propulsion control system, chassis, and wheels, cooling system, and braking systems; the installation and interconnection of the heating and air conditioning equipment; the installation of pneumatic system and the electrical system,

door systems, passenger seats, passenger grab rails, destination signs, wheelchair lifts or ramps and other equipment required to make the vehicle accessible to persons with disabilities, and road testing. Final Assembly activities shall also include final inspection, repairs and preparation of the vehicles for delivery. In the case of articulated vehicles, the interconnection of the car bodies or shells shall be included as work to be performed by the manufacturer as part of vehicle delivery.

(c) If a manufacturer's final assembly processes do not include all the activities that are typically considered the minimum requirements, it can request a Federal Transit Administration (FTA) determination of compliance. FTA will review these requests on a case-by-case basis to determine compliance with Buy America.

§ 661.12 [Amended]

■ 9. Amend § 661.12 as follows:

■ a. Remove ''Certificate of Compliance With Section 165(b)(3)'' and add in its place ''Certificate of Compliance with Buy America Rolling Stock Requirements'' and remove ''section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended'' and add in its place ''49 U.S.C. 5323(j)'' and

■ b. Remove ''Certificate for Non-Compliance with Section 165(b)(3)'' and add in its place ''Certificate of Non-Compliance with Buy America Rolling Stock Requirements''; remove ''section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended'' and add in its place ''49 U.S.C. 5323(j)''; and remove ''section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act of 1982'' and add in its place ''49 U.S.C. 5323(j)(2)(C)''.

§ 661.18 [Amended]

■ 10. Amend the introductory text by removing ''the Intermodal Surface Transportation Efficiency Act of 1991'' and adding in its place ''the Federal Public Transportation Act of 2005''.

James S. Simpson,

Administrator.

[FR Doc. E7–18355 Filed 9–19–07; 8:45 am]

BILLING CODE 4910–57–P

Proposed Rules

Federal Register

Vol. 72, No. 182

Thursday, September 20, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29249; Directorate Identifier 2007–NM–112–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

After a push back from the gate, an A320–200 aircraft was preparing to initiate taxi, when a NLG (nose landing gear) uncommanded retraction occurred, and then the aircraft abruptly hit the ground.

* * * Untimely unlocking and/or retraction of the NLG, while on the ground, could cause injury to ground personnel and significant structural damage to the airplane.

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

DATES: We must receive comments on this proposed AD by October 22, 2007.

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

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *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.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–29249; Directorate Identifier 2007–NM–112–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0065R1, dated June 12, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

After push back from the gate, an A320–200 aircraft was preparing to initiate taxi, when a NLG (nose landing gear) uncommanded retraction occurred, and then the aircraft abruptly hit the ground.

Investigations revealed that the retract condition is caused by a combination of a faulty MLG (main landing gear) proximity switch, a power interruption to LGCIUs (Landing Gear Control and Interface Units) and an internal hydraulic leak through the LG (landing gear) selector valve 40GA. The internal hydraulic leak through the LG selector valve 40GA was due to a broken seal in one of the end cap chambers for the valve spool. As a corrective action, a duplicate inspection (DI or DI–BE) for these valves has been introduced in production, and the Component Maintenance Manual (CMM) has been revised. Untimely unlocking and/or retraction of the NLG, while on the ground, could cause injury to ground personnel and significant structural damage to the aircraft.

This Airworthiness Directive (AD) mandates the inspections of the LG selector valve 40GA and the LG door selector valve 41GA, to identify a possible hydraulic leak.

The corrective action includes replacing the LG selector valve 40GA and/or the LG door selector valve 41GA if necessary. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletin A320–32–1290, Revision 01, dated November 10, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 653 products of U.S. registry. We also estimate that it would take about 7 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $365,680, or $560 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2007–29249; Directorate Identifier 2007–NM–112–AD.

Comments Due Date

(a) We must receive comments by October 22, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318, A319, A320, and A321 series airplanes, certificated in any category, except those identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Manufacturer serial numbers (MSNs) 2389, 2392, 2393, 2396, 2398, 2403, 2405, 2407, 2409, 2410, 2411, 2413 through 2439, 2441, and MSNs above 2441, on which no replacement of the landing gear (LG) selector valve 40GA or the LG door selector valve 41GA has been performed since aircraft delivery from Airbus.

(2) Aircraft on which LG selector valve 40GA and LG door selector valve 41GA have been stamped to indicate that a duplicate inspection has been done. If the duplicate inspection has been done, the amendment plates on the valves will be stamped with letters ''DI'' or ''DI-BE.''

Subject

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

Reason

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

After push back from the gate, an A320–200 aircraft was preparing to initiate taxi, when a NLG (nose landing gear) uncommanded retraction occurred, and then the aircraft abruptly hit the ground.

Investigations revealed that the retract condition is caused by a combination of a faulty MLG (main landing gear) proximity switch, a power interruption to LGCIUs (Landing Gear Control and Interface Units) and an internal hydraulic leak through the LG (landing gear) selector valve 40GA. The internal hydraulic leak through the LG selector valve 40GA was due to a broken seal in one of the end cap chambers for the valve spool. As a corrective action, a duplicate inspection (DI or DI–BE) for these valves has been introduced in production, and the Component Maintenance Manual (CMM) has been revised. Untimely unlocking and/or retraction of the NLG, while on the ground, could cause injury to ground personnel and significant structural damage to the aircraft.

This Airworthiness Directive (AD) mandates the inspections of the LG selector valve 40GA and the LG door selector valve 41GA, to identify a possible hydraulic leak. The corrective action includes replacing the LG selector valve 40GA and/or the LG door selector valve 41GA if necessary.

Actions and Compliance

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

(1) For aircraft that have accumulated up to and including 20,000 total flight cycles as of the effective date of this AD: Within 4,500 flight cycles after the effective date of this AD, but not exceeding 20,800 total flight cycles, inspect for hydraulic leaking of the LG selector valve 40GA and the LG door selector valve 41GA and replace if necessary the LG selector valve 40GA and the LG door selector valve 41GA before further flight in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1290, Revision 01, dated November 10, 2006.

(2) For aircraft that have accumulated over 20,000 total flight cycles as of the effective date of this AD: Within 800 flight cycles after the effective date of this AD, inspect for hydraulic leaking of the LG selector valve 40GA and the LG door selector valve 41GA and replace if necessary the LG selector valve 40GA and the LG door selector valve 41GA before further flight in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1290, Revision 01, dated November 10, 2006.

(3) For all airplanes: Repeat the inspection specified in paragraph (f)(1) or (f)(2) of this AD, as applicable, thereafter at intervals not to exceed 20,000 flight cycles, or 89 months, whichever occurs first, and replace if necessary (i.e., if any leakage is found) the LG selector valve 40GA and the LG door selector valve 41GA before further flight, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1290, Revision 01, dated November 10, 2006.

(4) For all airplanes: From the effective date of this AD, the installation of LG selector valve 40GA or LG door selector valve 41GA, that do not have the duplicate inspection ''DI'' or ''DI-BE'' recorded on their amendment plates, is possible provided that it is inspected within 800 flight cycles after installation, in accordance with the instructions given in Airbus Service Bulletin A320–32–1290, Revision 01, dated November 10, 2006. Repeat the inspection thereafter as given in paragraph (f)(3) of this AD.

(5) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A320–32–1290, dated May 2, 2006, are acceptable for compliance with the corresponding actions of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, Transport Airplane Directorate, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2007–0065R1, dated June 12, 2007, and Airbus Service Bulletin A320–32–1290, Revision 01, dated November 10, 2006, for related information.

Issued in Renton, Washington, on September 10, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–18540 Filed 9–19–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29259; Directorate Identifier 2007–NM–195–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Boeing Model 767 airplanes. The existing AD currently requires repetitive measurements of the rudder and elevator freeplay, repetitive lubrications of rudder and elevator components, and related investigative/corrective actions if necessary. This proposed AD would instead require revised repetitive measurements of the rudder freeplay and the elevator freeplay for each of the power control actuators (PCAs) that move the rudder and elevator, corrective and related investigative actions if necessary, and repetitive lubrications of the rudder and elevator components. For some airplanes, this proposed AD would also require related concurrent actions. This proposed AD results from reports of freeplay-induced vibration of the rudder and the elevator. The potential for vibration of the control surface should be avoided because the point of transition from vibration to divergent flutter is unknown. We are proposing this AD to prevent excessive vibration of the airframe during flight, which could result in loss of control of the airplane.

DATES: We must receive comments on this proposed AD by October 22, 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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6421; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2007–29259; Directorate Identifier 2007–NM–195–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 level 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 17, 2006, we issued AD 2006–11–12, amendment 39–14616 (71 FR 30272, May 26, 2006), for all Boeing Model 767 airplanes. That AD requires repetitive measurements of the rudder and elevator freeplay, repetitive lubrication of rudder and elevator components, and related investigative/corrective actions if necessary. That AD resulted from reports of freeplay-induced vibration of the rudder and the elevator. We issued that AD to prevent excessive vibration of the airframe during flight, which could result in loss of control of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2006–11–12, we have learned that the procedures in Boeing Special Attention Service Bulletins 767–27–0197 and 767–27–0198, both dated October 27, 2005 (referred to in the existing AD as the appropriate sources of service information for accomplishing the actions required by that AD), yielded false-positive results for the measurements of the rudder and elevator freeplay. The service bulletin instructions for measuring the freeplay also did not include information on certain prior or concurrent actions to be performed on certain airplanes. Therefore, we have determined that the requirements of AD 2006–11–12 do not adequately address the identified unsafe condition.

Other Relevant Rulemaking

On February 21, 2001, we issued AD 2001–04–09, amendment 39–12128 (66 FR 13227, March 5, 2001). That AD requires repetitively testing the elevator control system to determine if an elevator power control actuator (PCA) is rigged incorrectly due to yielded or failed shear rivets in a bellcrank assembly, and follow-on actions, if necessary. That AD refers to Boeing Alert Service Bulletins 767–27A0168 and 767–27A0169, both dated November 21, 2000, as the applicable sources of service information. Boeing Alert Service Bulletins 767–27A0168 and 767–27A0169 are referred to in this proposed AD as sources of service information for accomplishing concurrent actions on certain airplanes. This proposed AD would not affect any of the requirements of AD 2001–04–09.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletins 767–27–0197, Revision 1, dated July 19, 2007 (for Model 767–200, –300, and –300F series airplanes); and 767–27–0198, Revision 1, dated July 19, 2007 (for Model 767–400ER series airplanes). The service bulletins describe improved procedures for repetitive measurements of the rudder freeplay and the elevator freeplay for each of the PCAs that move the rudder and elevator. For freeplay that exceeds certain specified limits, the service bulletins describe procedures for doing applicable related corrective and related investigative actions. Corrective and related investigative actions include repairing or replacing all applicable affected parts if necessary, and repeating the freeplay measurement, until the freeplay is within acceptable limits. Affected parts may include worn or loose hanger links, reaction links, PCA rod ends, and trunnion connections that contribute to the freeplay. The service bulletins also describe procedures and repetitive intervals for repetitive lubrication of the rudder and elevator components that are the same as those described in the original issues of the service bulletins.

For certain Model 767–200, –300, and –300F series airplanes, Boeing Special Attention Service Bulletin 767–27–0197, Revision 1, specifies prior or concurrent accomplishment of Boeing Alert Service Bulletin 767–27A0168, dated November 21, 2000, which describes, among other actions, procedures for inspecting the elevator bellcranks for any shear rivets that are broken or yielded.

For certain Model 767–400ER series airplanes, Boeing Special Attention Service Bulletin 767–27–0198, Revision 1, specifies prior or concurrent accomplishment of Boeing Alert Service Bulletin 767–27A0169, dated November 21, 2000, which describes, among other actions, procedures for inspecting the elevator bellcranks for any shear rivets that are broken or yielded.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2006–11–12. This proposed AD would require accomplishing the actions specified in the special attention service bulletins described previously, except as discussed under ''Differences Between the Proposed AD and the Special Attention Service Bulletins.''

Differences Between the Proposed AD and the Special Attention Service Bulletins

Although Revision 1 of Boeing Special Attention Service Bulletins 767–27–0197 and 767–27–0198 recommends accomplishing the initial rudder and elevator freeplay measurements within 18 months after the date on the service bulletins, the proposed AD would require a compliance time of 12 months after the effective date of the AD. We have determined that 18 months would not address the identified unsafe condition soon enough to ensure an adequate level of safety for the affected fleet. In developing an appropriate compliance time for this proposed AD, we considered the degree of urgency associated with the subject unsafe condition, and the possibility that this proposed AD could extend the compliance time for airplanes on which the measurements required in AD 2006–11–12 have not been accomplished. In light of these factors, we find that 12 months represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with Boeing.

Costs of Compliance

There are about 979 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. No parts are necessary to accomplish any action.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Freeplay measurement	30	$80	$2,400, per measurement cycle.	423	$1,015,200, per measurement cycle.

ESTIMATED COSTS—Continued

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Lubrication	27	$80	$2,160, per lubrication cycle	423	$913,680, per lubrication cycle.

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 39–14616 (71 FR 30272, May 26, 2006) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2007–29259; Directorate Identifier 2007–NM–195–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 22, 2007.

Affected ADs

(b) This AD supersedes AD 2006–11–12.

Applicability

(c) This AD applies to all Boeing Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports of freeplay-induced vibration of the rudder and the elevator. The potential for vibration of the control surface should be avoided because the point of transition from vibration to divergent flutter is unknown. We are issuing this AD to prevent excessive vibration of the airframe during flight, which could result in loss of control of the airplane.

Compliance

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

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions and Appendices A, B, and C of the following service bulletins, as applicable:

(1) For Model 767–200, –300, and –300F series airplanes: Boeing Special Attention Service Bulletin 767–27–0197, Revision 1, dated July 19, 2007; and

(2) For Model 767–400ER series airplanes: Boeing Special Attention Service Bulletin 767–27–0198, Revision 1, dated July 19, 2007.

Repetitive Measurements

(g) At the latest of the compliance times specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, as applicable: Measure the rudder and elevator freeplay. Repeat the measurement thereafter at intervals not to exceed 12,000 flight hours or 36 months, whichever occurs first. Do all actions required by this paragraph in accordance with the service bulletin.

(1) Within 12 months after the effective date of this AD.

(2) Within 36 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(3) For the elevator freeplay measurement: Within 12,000 flight hours or within 36 months after the last elevator freeplay inspection accomplished in accordance with Boeing Special Attention Service Bulletin 767–27–0197 or 767–27–0198, both dated October 27, 2005, as applicable, whichever occurs first.

Related Investigative and Corrective Actions

(h) If any measurement found during the measurement required by paragraph (g) of this AD exceeds any applicable limit specified in the service bulletin: Before further flight, do the applicable related investigative and corrective actions in accordance with the service bulletin.

Initial Lubrication

(i) At the latest of the compliance times specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD, as applicable: Lubricate the rudder and elevator components specified in the service bulletin. Do all actions required by this paragraph in accordance with the service bulletin.

(1) Within 9 months after the effective date of this AD, or within 9 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness; whichever occurs later.

(2) For airplanes on which BMS 3–33 grease is not already in use prior to the time the lubrication task is being accomplished: Within 3,000 flight hours or 9 months after the last lubrication accomplished in accordance with the service bulletin or Boeing Special Attention Service Bulletin 767–27–0197 or 767–27–0198, both dated October 27, 2005, whichever occurs first.

(3) For airplanes on which BMS 3–33 grease is already in use prior to the time the lubrication task is being accomplished: Within 6,000 flight hours or 18 months after the last lubrication accomplished in

accordance with the service bulletin or Boeing Special Attention Service Bulletin 767–27–0197 or 767–27–0198, both dated October 27, 2005, whichever occurs first.

Repetitive Lubrication

(j) Repeat the lubrication required in paragraph (i) of this AD at the applicable interval specified in paragraph (j)(1) or (j)(2) of this AD.

(1) For airplanes on which BMS 3–33 grease is not already in use prior to the time the lubrication task is being accomplished: At intervals not to exceed 3,000 flight hours or 9 months, whichever occurs first.

(2) For airplanes on which BMS 3–33 grease is already in use prior to the time the lubrication task is being accomplished: At intervals not to exceed 6,000 flight hours or 18 months, whichever occurs first.

Repetitive Prior or Concurrent Inspection

(k) For airplanes specified in paragraphs (k)(1) and (k)(2) of this AD: Prior to or concurrently with the accomplishment of each elevator freeplay measurement specified in paragraph (g) of this AD, do all applicable actions required by AD 2001–04–09.

(1) Group 1, configuration 2, airplanes as identified in Boeing Special Attention Service Bulletin 767–27–0197, Revision 1, dated July 19, 2007.

(2) Group 1, configuration 1, airplanes as identified in Boeing Special Attention Service Bulletin 767–27–0198, Revision 1, dated July 19, 2007.

Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved previously in accordance with AD 2006–11–12 are approved as AMOCs for the corresponding provisions of this AD.

(5) AMOCs approved previously in accordance with AD 2001–04–09, are approved as AMOCs for the corresponding provisions of paragraph (k) of this AD.

Issued in Renton, Washington, on September 13, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–18544 Filed 9–19–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29257; Directorate Identifier 2007–NM–144–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This proposed AD would require repetitive detailed inspections for cracking of the left side and right side frame and reinforcement angles at fuselage station (FS) 640 between stringer 9 and stringer 12, and corrective actions if necessary. This proposed AD results from reports that cracks have been discovered on the frame and reinforcement angles at FS 640. We are proposing this AD to detect and correct cracking of the frame, which could lead to failure of the fuselage structure and possible loss of the airplane.

DATES: We must receive comments on this proposed AD by October 22, 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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Pong K. Lee, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7324; fax (516) 794–5531.

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–2007–29257; Directorate Identifier 2007–NM–144–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 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 level 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

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. TCCA advises that cracks have been discovered on the frame and reinforcement angles at fuselage station (FS) 640 on a number of CRJ (Canadair Regional Jet) airplanes. This condition, if not corrected, could result in failure of the fuselage structure and possible loss of the airplane.

Relevant Service Information

Bombardier has issued Alert Service Bulletin 601R–53–061, Revision E, dated December 7, 2006. The alert service bulletin describes procedures for doing repetitive detailed visual inspections for cracking of the frame at fuselage station (FS) 640 between stringer 9 and stringer 12 (Part A of the Accomplishment Instructions) and, if necessary, corrective actions as follows:

- Repair as described in Part A of the Accomplishment Instructions;
- Install a modification, including related investigative and corrective actions; or
- Contact Bombardier for repair instructions.

The related investigative and corrective actions of the modification (Part C of the Accomplishment Instructions) include cutting out a section of the flange frame at FS640 then doing a liquid penetrant or eddy current inspection for cracking of the skin doubler, and contacting Bombardier for repair instructions. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. TCCA mandated the service information and issued Canadian airworthiness directive CF–2003–12, dated May 7, 2003, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and Bombardier Alert Service Bulletin/ Canadian Airworthiness Directive.''

Differences Between the Proposed AD and Bombardier Alert Service Bulletin/ Canadian Airworthiness Directive

The Canadian airworthiness directive specifies that Bombardier Alert Service Bulletin 601R–53–061, Revision B, dated February 20, 2003, or later revisions, must be used to do all described inspections and actions. However, we have determined that Revision E, dated December 7, 2006, of the alert service bulletin no longer contains certain actions described by Revision B. Therefore, this proposed AD would require doing all actions in accordance with Alert Service Bulletin 601R–53–061, Revision E, dated December 7, 2006. This difference has been coordinated with TCCA.

In this proposed AD, the ''detailed visual inspection'' specified in the Bombardier alert service bulletin and Canadian airworthiness directive is referred to as a ''detailed inspection.'' We have included the definition for a detailed inspection in a note in the proposed AD.

The Bombardier alert service bulletin and Canadian airworthiness directive specify to contact Bombardier for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions using a method approved by the FAA or TCCA (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by the FAA or TCCA (or its delegated agent) would be acceptable for compliance with this proposed AD.

Although the Accomplishment Instructions of the alert service bulletin describe procedures for submitting certain information to the manufacturer, this proposed AD would not require that action.

Interim Action

We consider this proposed AD interim action. If final action is later identified, we might consider further rulemaking then.

Costs of Compliance

This proposed AD would affect about 739 airplanes of U.S. registry. The proposed inspection would take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $118,240, or $160 per airplane, per inspection cycle.

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):

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2007–29257; Directorate Identifier 2007–NM–144–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 5, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category; as identified in Bombardier Alert Service Bulletin 601R–53–061, Revision E, dated December 7, 2006.

Unsafe Condition

(d) This AD results from reports that cracks have been discovered on the frame and reinforcement angles at fuselage station (FS) 640. Failure of this frame could degrade the structural integrity of the airplane. We are issuing this AD to detect and correct cracking of the frame, which could lead to failure of the fuselage structure and possible loss of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Bombardier Alert Service Bulletin 601R–53–061, Revision E, dated December 7, 2006.

Detailed Inspection

(g) Before the accumulation of 8,600 total flight cycles or within 1,100 flight cycles after the effective date of this AD, whichever occurs later: Perform a detailed inspection to detect cracking of the left side and right side frames and reinforcement angles at FS640 between stringer 9 and stringer 12, in accordance with Part A of the Accomplishment Instructions of the service bulletin.

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

Repetitive Inspection and Corrective Action

(h) If no crack is found during the inspection required by paragraph (g) of this AD: Repeat the detailed inspection thereafter at intervals not to exceed 1,100 flight cycles, until the frame modification described in paragraph (i)(2) of this AD has been done.

(i) If any crack is found during the inspection required by paragraph (g) of this AD: Before further flight, repair the crack in accordance with paragraph (i)(1), (i)(2), or (i)(3) of this AD, as applicable.

(1) For any crack found in the frame at the stringer 9 cut-out only, repair in accordance with Part A of the Accomplishment Instructions of the service bulletin.

(2) For any crack found in the frame reinforcement doubler only: Do the frame modification (including related investigative and corrective actions) described in Part C of the Accomplishment Instructions of the service bulletin, except where the alert service bulletin specifies to contact the manufacturer for repair instructions, repair the crack using a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent); then do the detailed inspection required by paragraph (j) of this AD.

(3) For any crack found in areas of the inspection zone described in paragraph (g) of this AD other than those described in paragraphs (i)(1) and (i)(2) of this AD: Repair the crack using a method approved by either the Manager, New York ACO, FAA; or TCCA (or its delegated agent).

Repetitive Inspection After Frame Modification

(j) Within 12,000 flight cycles after doing the modification described in paragraph (i)(2) of this AD, do the detailed inspection required by paragraph (g) of this AD. Repeat the detailed inspection thereafter at intervals not to exceed 1,100 flight cycles.

No Reporting Requirement

(k) Although the alert service bulletin referred to in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, New York 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.

Related Information

(m) Canadian airworthiness directive CF–2003–12, dated May 7, 2003, also addresses the subject of this AD.

Issued in Renton, Washington, on September 12, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–18539 Filed 9–19–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29255; Directorate Identifier 2007–NM–085–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD would require doing repetitive internal eddy current and detailed inspections to detect cracked stringer tie clips; doing applicable corrective and related investigative actions, if necessary; and measuring the fastener spacing and the edge margin; as applicable. As a temporary alternative to doing the actions described previously, this proposed AD would require repetitive external general visual inspections of the skin and lap joints for cracks and evidence of overload resulting from cracked stringer tie clips, and applicable corrective actions if necessary. This proposed AD results from a report of several cracked stringer tie clips. We are proposing this AD to prevent multiple cracked stringer tie clips and damaged skin and frames, which could lead to the skin and frame structure developing cracks and consequent decompression of the airplane.

DATES: We must receive comments on this proposed AD by November 5, 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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–29255; Directorate Identifier 2007–NM–085–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 level 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

We have received a report of 15 cracked stringer tie clips in the crown skin area between station (STA) 500B and STA 907 between stringer (S) 10L and S–10R, on a Boeing Model 737 airplane. The airplane had accumulated total 31,415 flight cycles. This airplane had three adjacent cracked clips at two consecutive body station frames (six clips total). The six stringer tie clips were cracked along the joint common to the stringer. The six total stringer tie clips were the same formed bonded stringer tie clips that were installed as terminating action in accordance with Boeing Service Bulletin 737–53–1085, Revision 1, dated May 10, 1990.

Stringer tie clip cracking along the joint common to the stringer occurs primarily as a result of cyclic loading associated with cabin pressure and flight loads. If three adjacent stringer tie clips on one frame crack, it could result in an inability of the fuselage frame structure to support operating loads. This could result in local skin buckling and deformation of the skin and frame. Multiple cracked stringer tie clips and damaged skin and frames, if not corrected, could lead to the skin and frame structure developing cracks, which could result in decompression of the airplane.

Other Relevant Rulemaking

We previously issued AD 93–08–04, amendment 39–8551 (58 FR 25546, April 27, 1993), for certain Boeing Model 737–100, –200, and –200C series airplanes. That AD requires structural inspections of older airplanes and is part of the Aging Airplane Service Bulletin Structural Modification and Inspection Program. Boeing Service Bulletin 737–53–1085, Revision 1, is one of several service bulletins required by that AD.

This proposed AD would affect the requirements of AD 93–08–04 pertaining to Boeing Service Bulletin 737–53–1085, Revision 1.

We previously issued AD 2002–07–08, amendment 39–12702 (67 FR 17917, April 12, 2002), applicable to certain Boeing Model 737–200, –200C, –300, –400, and –500 series airplanes. That AD requires repetitive inspections to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of cracking found. That AD also requires modification of the fuselage lap joints at certain locations, which constitutes terminating action for certain repetitive inspections.

This proposed AD would not affect the current requirements of AD 2002–07–08.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737–53–1268, dated August 25, 2006. This service bulletin supersedes Boeing Service Bulletin 737–53–1085, Revision 1.

The service bulletin describes one required inspection and one temporary alternative inspection. Inspection A, the one required inspection, involves the following:

• Doing repetitive internal eddy current and detailed inspections to detect cracked stringer tie clips. The inspection area is from STA 559 to STA 887, STA 360 to STA 540, and STA 907. The inspections from STA 559 to STA 887 are identical to those specified in Boeing Service Bulletin 737–53–1085, Revision 1. If the terminating action was done in accordance with Boeing Service Bulletin 737–53–1085, the inspections need to be restarted in accordance with Boeing Special Attention Service Bulletin 737–53–1268.

• Doing applicable corrective and related investigative actions, if necessary. The corrective actions include replacing any cracked stringer tie clip with a new clip, contacting Boeing for repair instructions, and repairing any damaged lap joints; as applicable. The related investigative actions include doing an internal detailed inspection to detect damaged or deformed skin and frame and to detect damaged lap joints, and doing internal eddy current inspections to detect cracked lap joints; as applicable.

• Measuring the fastener spacing and the edge margin; as applicable.

The initial compliance time for Inspection A is before the accumulation of 25,000 or 35,000 total flight cycles (as applicable), or within 2 or 3 years (as applicable) after the date of the service bulletin, whichever occurs later. The repeat interval for Inspection A is 15,000 or 20,000 flight cycles (as applicable).

Inspection B, which is a temporary alternative to doing Inspection A, involves the following:

- Doing repetitive external general visual inspections of the skin and lap joints for cracks and evidence of overload resulting from cracked stringer tie clips, and
- Doing applicable corrective actions if necessary. The corrective actions include contacting Boeing for repair instructions, and repairing any cracked or damaged lap joint and skin.

For Inspection B, the threshold for the initial compliance times ranges between 37,500 and 47,500 total flight cycles, and the grace period for the initial compliance times is 25,000 flight cycles or 6 or 12 months, depending on the number of flight cycles on the airplane. Inspection B must be done before exceeding an inspection period ranging from 5,000 to 50,000 total flight cycles. The repeat interval for Inspection B is 2,500 flight cycles.

The service bulletin also describes procedures for an optional eddy current inspection to detect damaged stringer tie clips and replacement of any cracked clip with a new clip. The optional inspection can be done in addition to and at the same time as Inspection A described previously. The optional inspection will detect damaged stringer clips earlier than the detailed inspection, which may prevent future costly repairs.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The service bulletin refers to Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001, as an additional source of service information for doing an internal eddy current inspection of the lap joint for certain airplane configurations.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and Service Information.''

Differences Between the Proposed AD and Service Information

The service information specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Costs of Compliance

There are about 2,685 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours [1]	Average labor rate per hour	Cost per airplane [1]	Number of U.S.-registered airplanes	Fleet cost [1]
Inspection A	Between 40 and 103	$80	Between $3,200 and $8,240, per inspection cycle.	787	Between $2,518,400 and $6,484,880, per inspection cycle.
Inspection B (temporary alternative to Inspection A).	Between 2 and 109	80	Between $160 and $8,720.	787	Between $125,920 and $6,862,640, per inspection cycle.

[1] Depending on the airplane configuration.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–29255; Directorate Identifier 2007–NM–085–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 5, 2007.

Affected ADs

(b) AD 93–08–04, amendment 39–8551.

Applicability

(c) This AD applies to Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 737–53–1268, dated August 25, 2006.

Unsafe Condition

(d) This AD results from a report of several cracked stringer tie clips. We are issuing this AD to prevent multiple cracked stringer tie clips and damaged skin and frames, which could lead to the skin and frame structure developing cracks and consequent decompression of the airplane.

Compliance

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

Service Bulletin References

(f) The term ''the service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Service Bulletin 737–53–1268, dated August 25, 2006.

Inspection A: Required Internal Inspections, Applicable Corrective and Related Investigative Actions, and Measurement

(g) Do repetitive internal eddy current and detailed inspections to detect cracked stringer tie clips; do applicable corrective and related investigative actions, if necessary; and measure the fastener spacing and the edge margin; as applicable. Do all applicable actions at the applicable compliance times and repeat intervals identified in tables 2 through 8 inclusive of paragraph 1.E., ''Compliance,'' of the service bulletin; except as provided by paragraphs (i), (j), and (k) of this AD. Do all applicable actions in accordance with the Accomplishment Instructions of the service bulletin, except as provided by paragraph (m) of this AD.

Note 1: The service bulletin refers to Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001, as an additional source of service information for doing an internal eddy current inspection of the lap joint for certain airplane configurations.

Inspection B: Temporary Alternative External Inspections and Corrective Actions

(h) As a temporary alternative to doing the actions required by paragraph (g) of this AD, do repetitive external general visual inspections of the skin and lap joints for cracks and evidence of overload resulting from cracked stringer tie clips, and applicable corrective actions if necessary. Do all applicable actions at the applicable compliance times and repeat intervals identified in tables 9 through 12 inclusive of paragraph 1.E., ''Compliance,'' of the service bulletin, but not to exceed the flight cycles in the ''Inspection Period Allowed'' column of the tables; except as provided by paragraphs (i) and (l) of this AD. Do all applicable actions in accordance with the Accomplishment Instructions of the service bulletin, except as provided by paragraph (m) of this AD.

Note 2: The eddy current inspection along the stringer tie clip radius to detect damage and replacement, as applicable, specified in paragraph 3.B.5. of the Accomplishment Instructions of the service bulletin are not required by this AD. The actions are optional and can be done in addition to and at the same time as the actions required by paragraph (g) of this AD.

Exceptions to Service Information

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

(j) For Model 737–100, –200, and –200C series airplanes, on which Boeing Service Bulletin 737–53–1085, Revision 1, dated May 10, 1990, has not been done in accordance with AD 93–08–04: As of the effective date of this AD, do the applicable inspections from STA 559 to STA 887 in accordance with paragraph (g) of this AD, at the applicable compliance times specified in paragraph (b) of AD 93–08–04.

(k) In the first row of tables 5 and 6 of paragraph 1.E., ''Compliance,'' of the service bulletin, where the service bulletin specifies a compliance time of before 25,000 total airplane flight cycles, this AD requires a compliance time of before the accumulation of 25,000 total flight cycles, or within 2 years after the effective date of this AD, whichever occurs later.

(l) Where the service bulletin specifies no starting point (e.g., ''after the date on the service bulletin'') for a grace period, this AD requires compliance within the specified grace period after the effective date of this AD.

(m) Where the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair the discrepancy using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

Certain Actions End Certain Requirements of AD 93–08–04

(n) Accomplishment of the internal eddy current and detailed inspections for STA 559 to STA 887 in accordance with paragraph (g) of this AD constitutes compliance with the inspections required by paragraph (a) of AD 93–08–04, as it pertains to Boeing Service Bulletin 737–53–1085, Revision 1, dated May 10, 1990. Accomplishment of the internal eddy current and detailed inspections does not terminate the remaining requirements of AD 93–08–04, as it applies to other service bulletins. Operators are required to continue to inspect and/or modify per the other service bulletins listed in that AD.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on September 12, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–18554 Filed 9–19–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29256; Directorate Identifier 2007–NM–137–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Two events have been reported of Fokker 100 (F.28 Mk.0100) aircraft, where the Nose Landing Gear (NLG) failed to extend in the

normal mode and problems were experienced to open the NLG doors, almost preventing extension of the NLG in the emergency (alternate) mode. Subsequent investigation and tests have shown that the friction of the bearing in the roller of the NLG Door Uplock Bracket Assembly is high, causing increased resistance in the mechanical system that unlocks the NLG doors. This condition, if not corrected, may result in a NLG up landing, which is considered a hazardous event.

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

DATES: We must receive comments on this proposed AD by October 22, 2007.

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

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *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.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–29256; Directorate Identifier 2007–NM–137–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the aviation authority for the Netherlands, has issued Dutch Airworthiness Directive NL–2006–004, dated February 28, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Two events have been reported of Fokker 100 (F.28 Mk.0100) aircraft, where the Nose Landing Gear (NLG) failed to extend in the normal mode and problems were experienced to open the NLG doors, almost preventing extension of the NLG in the emergency (alternate) mode. Subsequent investigation and tests have shown that the friction of the bearing in the roller of the NLG Door Uplock Bracket Assembly is high, causing increased resistance in the mechanical system that unlocks the NLG doors. This condition, if not corrected, may result in a NLG up landing, which is considered a hazardous event. Since a potentially unsafe condition has been identified that may exist or develop on aircraft of the same type design, this Airworthiness Directive requires the introduction of an improved roller in the NLG Door Uplock Bracket Assembly.

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

Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF100–32–143, dated February 15, 2006, and Component Service Bulletin D76501–32–17, dated February 15, 2006. The actions described in this service information (replacing the roller in the uplock bracket) are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 13 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $135 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $6,955, or $535 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for

safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket No. FAA–2007–29256; Directorate Identifier 2007–NM–137–AD.

Comments Due Date

(a) We must receive comments by October 22, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Model F.28 Mark 0070 and 0100 airplanes, certificated in any category, all serial numbers.

Subject

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

Reason

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

Two events have been reported of Fokker 100 (F.28 Mk.0100) aircraft, where the Nose Landing Gear (NLG) failed to extend in the normal mode and problems were experienced to open the NLG doors, almost preventing extension of the NLG in the emergency (alternate) mode. Subsequent investigation and tests have shown that the friction of the bearing in the roller of the NLG Door Uplock Bracket Assembly is high, causing increased resistance in the mechanical system that unlocks the NLG doors. This condition, if not corrected, may result in a NLG up landing, which is considered a hazardous event. Since a potentially unsafe condition has been identified that may exist or develop on aircraft of the same type design, this Airworthiness Directive requires the introduction of an improved roller in the NLG Door Uplock Bracket Assembly.

Actions and Compliance

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

(1) Within 4,000 flight hours after the effective date of this AD, modify the NLG Door Uplock Bracket Assembly, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–143, dated February 15, 2006.

(2) As of 18 months after the effective date of this AD, no spare NLG Door Uplock Bracket Assembly may be installed as a replacement part unless it has been modified in accordance with the Accomplishment Instructions of Fokker Component Service Bulletin D76501–32–17, dated February 15, 2006.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI Dutch Airworthiness Directive NL–2006–004, dated February 28, 2006, Fokker Service Bulletin SBF100–32–143, dated February 15, 2006, and Fokker Component Service Bulletin D76501–32–17, dated February 15, 2006, for related information.

Issued in Renton, Washington, on September 12, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–18553 Filed 9–19–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 2007N–0262]

RIN 0910–AF92

Use of Ozone-Depleting Substances; Removal of Essential-Use Designation (Epinephrine)

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA), after consultation with the Environmental Protection Agency (EPA), is proposing to amend FDA's regulation on the use of ozone-depleting substances (ODSs) in self-pressurized containers to remove the essential-use designation for epinephrine used in oral pressurized metered-dose inhalers (MDIs). FDA has tentatively concluded that there are no substantial technical barriers to formulating epinephrine as a product that does not release ODSs, and therefore epinephrine would no longer be an essential use of ODSs. If the essential-use designation is removed, epinephrine MDIs containing an ODS could not be marketed after a suitable transition period. We will hold an open public meeting on the essential use of epinephrine on a date to be announced later.

DATES: Submit written or electronic comments by November 19, 2007.

ADDRESSES: You may submit comments, identified by Docket No. 2007N–0262 and/or RIN number 0910–AF92, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described previously in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents, comments, a transcript of, and material submitted for, the joint meeting of the Nonprescription Drugs and Pulmonary-Allergy Drugs Advisory Committee held on January 24, 2006, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell or Martha Nguyen, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

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I. Background

A. CFCs

Chlorofluorocarbons (CFCs) are organic compounds that contain carbon, chlorine, and fluorine atoms. CFCs were first used commercially in the early 1930s as a replacement for hazardous materials then used in refrigeration, such as sulfur dioxide and ammonia. Subsequently, CFCs were found to have a large number of uses, including as solvents and as propellants in self-pressurized aerosol products, such as MDIs.

CFCs are very stable in the troposphere, the lowest part of the atmosphere. They move to the stratosphere, a region that begins about 10 to 16 kilometers (km) (6 to 10 miles) above Earth's surface and extends up to about 50 km (31 miles) altitude. Within the stratosphere, there is a zone about 15 to 40 km (10 to 25 miles) above the Earth's surface in which ozone is relatively highly concentrated. This zone in the stratosphere is generally called the ozone layer. Once in the stratosphere, CFCs are gradually broken down by strong ultraviolet light, releasing chlorine atoms that then deplete stratospheric ozone. Depletion of stratospheric ozone by CFCs and other ODSs allows more ultraviolet-B (UV-B) radiation to reach the Earth's surface, where it increases skin cancers and cataracts, and damages some marine organisms, plants, and plastics.

B. Regulation of ODSs

The link between CFCs and the depletion of stratospheric ozone was discovered in the mid-1970s. Since 1978, the U.S. Government has pursued a vigorous and consistent policy, through the enactment of laws and regulations, of limiting the production, use, and importation of ODSs, including CFCs.

1. The 1978 Rules

In the **Federal Register** of March 17, 1978 (43 FR 11301 at 11318), FDA and EPA published rules banning, with a few exceptions, the use of CFCs as propellants in aerosol containers. These rules were issued under authority of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 *et seq.*) and the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*), respectively. FDA's rule (the 1978 rule) was codified as § 2.125 (21 CFR 2.125). These rules issued by FDA and EPA had been preceded by rules issued by FDA and the Consumer Product Safety Commission requiring products that contain CFC propellants to bear environmental warning statements on their labeling (42 FR 22018, April 29, 1977; 42 FR 42780, August 24, 1977).

The 1978 rule prohibited the use of CFCs as propellants in self-pressurized containers in any food, drug, medical device, or cosmetic. As originally published, the rule listed five essential uses exempt from the ban. The third listed essential use was for ''[m]etered-dose adrenergic bronchodilator human

drugs for oral inhalation.'' This use describes epinephrine MDIs.

The 1978 rule provided criteria for adding new essential uses, and several uses were added to the list, the last one in 1996. The 1978 rule did not provide any mechanism for removing essential uses from the list as alternative products were developed or CFC-containing products were removed from the market. The absence of a removal procedure came to be viewed as a deficiency in the 1978 rule, and was addressed in a later rulemaking, discussed in section I.B.5 of this document.

2. The Montreal Protocol

On January 1, 1989, the United States became a Party to the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) (September 16, 1987, 26 I.L.M. 1541 (1987)), available at *http://www.unep.org/ozone/pdfs/Montreal-Protocol2000.pdf*.[1] The United States played a leading role in the negotiation of the Montreal Protocol, believing that internationally coordinated control of ODSs would best protect both the U.S. and global public health and the environment from potential adverse effects of depletion of stratospheric ozone. Currently, there are 191 Parties to this treaty.[2] When it joined the treaty, the United States committed to reducing production and consumption of certain CFCs to 50 percent of 1986 levels by 1998 (Article 2(4) of the Montreal Protocol). It also agreed to accept an ''adjustment'' procedure, by which, following assessment of the existing control measures, the Parties could adjust the scope, amount, and timing of those control measures for substances already subject to the Montreal Protocol. As the evidence regarding the impact of ODSs on the ozone layer became stronger, the Parties used this adjustment procedure to accelerate the phase-out of ODSs. At the fourth Meeting of the Parties to the Montreal Protocol, held at Copenhagen in November 1992, the Parties adjusted Article 2 of the Montreal Protocol to eliminate the production and importation of CFCs by January 1, 1996, by Parties that are developed countries (Decision IV/2).[3] The adjustment also indicated that it would apply, ''save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be essential'' (Article 2A(4)).

One of the most important essential uses of CFCs under the Montreal Protocol is their use in MDIs for the treatment of asthma and chronic obstructive pulmonary disease (COPD). The decision on whether the use of CFCs in MDIs is ''essential'' for purposes of the Montreal Protocol turns on whether ''(1) It is necessary for the health, safety, or is critical for the functioning of society (encompassing cultural and intellectual aspects) and (2) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health'' (Decision IV/25).

Each request and any subsequent exemption is for only 1 year's duration (Decision V/18). Since 1994, the United States and some other Parties to the Montreal Protocol have annually requested, and been granted, essential-use exemptions for the production or importation of CFCs for their use in MDIs for the treatment of asthma and COPD (see, among others, Decisions VI/9 and VII/28). The exemptions have been consistent with the criteria established by the Parties, which make the grant of an exemption contingent on a finding that the use for which the exemption is being requested is essential for health, safety, or the functioning of society, and that there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of health or the environment (Decision IV/25).

Phasing out the use of CFCs in MDIs for the treatment of asthma and COPD has been an issue of particular interest to the Parties to the Montreal Protocol. Several decisions of the Parties have dealt with the transition to CFC-free MDIs, including the following decisions:

- Decision VIII/10 stated that the Parties that are developed countries would take various actions to promote industry's participation in a smooth and efficient transition away from CFC-based MDIs (San Jose, Costa Rica, 1996).
- Decision IX/19 required the Parties that are developed countries to present an initial national or regional transition strategy by January 31, 1999 (Montreal, Canada, 1997).
- Decision XII/2 elaborated on the content of national or regional transition strategies required under Decision IX/19 and indicated that any MDI for the treatment of asthma or COPD approved for marketing after 2000 would not be an ''essential use'' unless it met the criteria laid out by the Parties for essential uses (Ouagadougou, Burkina Faso, 2000).
- Decision XIV/5 requested that each Party report annually the quantities of CFC and non-CFC MDIs and dry-powder inhalers (DPIs) sold or distributed within its borders and the approval and marketing status of non-CFC MDIs and DPIs. Decision XIV/5 also noted ''with concern the slow transition to CFC-free metered-dose inhalers in some Parties'' (Rome, Italy, 2002).
- Decision XV/5 stated that, at the 17th Meeting of the Parties (in December 2005) or thereafter, no essential uses of CFCs will be authorized for Parties that are developed countries, unless the Party requesting the essential-use allocation has submitted an action plan for MDIs for which the sole active ingredient is albuterol. Among other items, the action plan should include a specific date by which the Party plans to cease requesting essential-use allocations of CFCs for albuterol MDIs to be sold or distributed in developed countries[4] (Nairobi, Kenya, 2003).
- Decision XVII/5 stated that Parties that are developed counties should provide a date to the Ozone Secretariat[5]

[1]FDA has verified all Web site addresses cited in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document has published in the **Federal Register**.

[2]The summary descriptions of the Montreal Protocol and decisions of Parties to the Montreal Protocol contained in this document are presented here to help you understand the background of the action we are taking. These descriptions are not intended to be formal statements of policy regarding the Montreal Protocol. Decisions by the Parties to the Montreal Protocol are cited in this document in the conventional format of ''Decision IV/2,'' which refers to the second decision recorded in the Report of the Fourth Meeting of the Parties to the Montreal Protocol on Substances That Deplete the Ozone Layer. Reports of Meetings of the Parties to the Montreal Protocol may be found on the United Nations Environment Programme's Web site at *http://ozone.unep.org/Meeting_Documents/mop/index.shtml*.

[3]Production of CFCs in economically less-developed countries is being phased out and is scheduled to end by January 1, 2010. See Article 2A of the Montreal Protocol.

[4]Our obligation under XV/5 was met by our final rule eliminating the essential use status of albuterol (70 FR 17168, April 4, 2005).

[5]The Ozone Secretariat is the Secretariat for the Montreal Protocol and the Vienna Convention for the Protection of the Ozone Layer (the Vienna Convention) (March 22, 1985, 26 I.L.M. 1529 (1985)), available at *http://hq.unep.org/ozone/pdfs/viennaconvention2002.pdf*. Based at the United Nations Environment Programme (UNEP) offices in Nairobi, Kenya, the Secretariat functions in accordance with Article 7 of the Vienna Convention and Article 12 of the Montreal Protocol.

The main duties of the Secretariat include the following:

- Arranging for and servicing the Conference of the Parties, Meetings of the Parties, their Committees, the Bureaux, Working Groups, and Assessment Panels;
- Arranging for the implementation of decisions resulting from these meetings;
- Monitoring the implementation of the Vienna Convention and the Montreal Protocol;
- Reporting to the Meetings of the Parties and to the Implementation Committee;

Continued

before the 18th Meeting of the Parties (October 30 to November 3, 2006) by which time a regulation or regulations will have been proposed to determine whether MDIs, other than those that have albuterol as the only active ingredient, are nonessential (Dakar, Senegal, 2005).

3. The 1990 Amendments to the Clean Air Act

In 1990, Congress amended the Clean Air Act to, among other things, better protect stratospheric ozone (Public Law No. 101–549, November 15, 1990) (the 1990 amendments). The 1990 amendments were drafted to complement, and be consistent with, our obligations under the Montreal Protocol (see section 614 of the Clean Air Act (42 U.S.C. 7671m)). Section 614(b) of the Clean Air Act provides that, in the case of a conflict between any provision of the Clean Air Act and any provision of the Montreal Protocol, the more stringent provision will govern. Section 604 of the Clean Air Act requires the phase-out of the production of CFCs by 2000 (42 U.S.C. 7671c),[6] while section 610 of the Clean Air Act (42 U.S.C. 7671i) required EPA to issue regulations banning the sale or distribution in interstate commerce of nonessential products containing CFCs. Sections 604 and 610 provide exceptions for ''medical devices.'' Section 601(8) (42 U.S.C. 7671(8)) of the Clean Air Act defines ''medical device'' as:

any device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), or drug delivery system-

(A) if such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner [of Food and Drugs]; and

(B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner [of Food and Drugs] in consultation with the Administrator [of EPA].

4. EPA's Implementing Regulations

EPA regulations implementing the Montreal Protocol and the stratospheric ozone protection provisions of the 1990 amendments are codified in part 82 of title 40 of the Code of Federal Regulations (40 CFR part 82). (See 40 CFR 82.1 for a statement of intent.) Like the 1990 amendments, EPA's implementing regulations contain two separate prohibitions, one on the production and import of CFCs (subpart A of 40 CFR part 82) and the other on the sale or distribution of products containing CFCs (40 CFR 82.66).

The prohibition on production and import of CFCs contains an exception for essential uses and, more specifically, for essential MDIs. The definition of essential MDI at 40 CFR 82.3 requires that the MDI be intended for the treatment of asthma or COPD, be essential under the Montreal Protocol, and if the MDI is for sale in the United States, be approved by FDA and listed as essential in FDA's regulations at § 2.125 (21 CFR 2.125).

The prohibition on the sale of products containing CFCs includes a specific prohibition on aerosol products and other pressurized dispensers. The aerosol product ban contains an exception for medical devices listed in § 2.125(e). The term ''medical device'' is used with the same meaning it was given in the 1990 amendments and includes drugs as well as medical devices.

5. FDA's 2002 Regulation

In the 1990s, we decided that § 2.125 required revision to better reflect our obligations under the Montreal Protocol, the 1990 amendments, and EPA's regulations, and to encourage the development of ozone-friendly alternatives to medical products containing CFCs. In particular, as acceptable alternatives that did not contain CFCs or other ODSs came on the market, there was a need to provide a mechanism for removing essential uses from the list in § 2.125(e). In the **Federal Register** of March 6, 1997 (62 FR 10242), we published an advance notice of proposed rulemaking (the 1997 ANPRM) in which we outlined our then-current thinking on the content of an appropriate rule regarding ODSs in products FDA regulates. We received almost 10,000 comments on the 1997 ANPRM. In response to the comments, we revised our approach and drafted a proposed rule published in the **Federal Register** of September 1, 1999 (64 FR 47719) (the 1999 proposed rule). We received 22 comments on the 1999 proposed rule. After minor revisions in response to these comments, we published a final rule in the **Federal Register** of July 24, 2002 (67 FR 48370) (the 2002 final rule) (corrected in 67 FR 49396, July 30, 2002, and 67 FR 58678, September 17, 2002). The 2002 final rule listed as a separate essential use each active moiety[7] marketed under the 1978 rule as essential uses for metered-dose steroid human drugs for oral inhalation and metered-dose adrenergic bronchodilator human drugs for oral inhalation; eliminated the essential-use designations in § 2.125(e) for metered-dose steroid human drugs for nasal inhalation and for products that were no longer marketed; set new standards to determine when a new essential-use designation should be added to § 2.125; and set standards to determine whether the use of an ODS in a medical product remains essential.

II. Criteria

Among other changes, the 2002 final rule, in revised § 2.125(g)(2), establishes a standard for removing an essential-use designation for any drug after January 1, 2005, that would apply to a drug for which there is no acceptable non-ODS alternative with the same active moiety. The process for removing the essential-use designation for such a drug must include a consultation with a relevant advisory committee and an open public meeting, in addition to a proposed rule and a final rule. The criterion established for removing the essential use in such circumstances is that it no longer meets the criteria specified in revised § 2.125(f) for adding a new essential use (§ 2.125(g)(2)). The criteria in § 2.125(f) are: ''(i) Substantial technical barriers exist to formulating the product without ODSs; (ii) The product will provide an unavailable important public health benefit; and (iii) Use of the product does not release cumulatively significant amounts of ODSs into the atmosphere or the release is warranted in view of the unavailable important public health benefit.''

The three criteria in § 2.25(f)(1) are linked by the word ''and''. Because the three criteria are linked by ''and'' (as

• Representing the Convention and the Protocol; and

• Receiving and analyzing data and information from the Parties on the production and consumption of ODSs.

[6]In conformance with Decision IV/2, EPA issued regulations accelerating the complete phase-out of CFCs, with exceptions for essential uses, to January 1, 1996 (58 FR 65018, December 10, 1993).

[7]Section 314.108(a) (21 CFR 314.108(a)) defines ''active moiety'' as the molecule or ion, excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds), or other noncovalent derivative (such as a complex, chelate, or clathrate) of the molecule, responsible for the physiological or pharmacological action of the drug substance. When describing the various essential uses, we will generally refer to the active moiety, for example, albuterol, as opposed to the active ingredient, which, using the same example, would be albuterol sulfate. When discussing particular indications and other material from the approved labeling of a drug product, we will generally use the brand name of the product, which, using the same example would be PROVENTIL HFA (among others). In describing material from treatises, journals, and other non-FDA approved publications, we will generally follow the usage in the original publication.

opposed to ''or''), failure to meet any single criterion satisfies the threshold under the regulation for determining that the use is not essential.

We discussed these criteria in the preamble to the 1999 proposed rule. A key point in our discussion of technical barriers was: Generally, FDA intends the term ''technical barriers'' to refer to difficulties encountered in chemistry and manufacturing. A petitioner would have to establish that it evaluated all available alternative technologies and explain in detail why each alternative was unusable to demonstrate that substantial technical barriers exist (1999 proposed rule at 47721).

In applying the ''technical barriers'' criterion, we will be looking at the results of reformulation efforts for similar products, as well as statements made about the manufacturer's particular efforts to reformulate their product or products.

Similarly, in discussing what is ''an unavailable important public health benefit,'' we said: The agency intends to give the phrase ''unavailable important public health benefit'' a markedly different construction from the [phrase used in the 1978 rule] ''substantial health benefit.'' A petitioner should show that the use of an ODS would save lives, significantly reduce or prevent an important morbidity, or significantly increase patient quality of life to support a claim of important public health benefit (1999 proposed rule at 47722).

In determining whether a drug product provides an otherwise unavailable important public health benefit, our primary focus is on the availability of non-ODS products that provide equivalent therapeutic benefits for patients who are currently using the CFC MDIs. If therapeutic alternatives exist for everyone using the CFC MDI, we would then determine that the CFC MDI does not provide an otherwise unavailable important public health benefit. In the case of epinephrine MDIs, the fact that they are marketed over-the-counter (OTC), while the therapeutic alternatives for epinephrine MDIs are prescription drugs, makes the analysis of whether everyone is adequately served by the therapeutic alternatives more complicated.

Under the third criterion, the threshold for removing the essential use designation is satisfied unless we find either: (1) The use of the product does not release cumulatively significant amounts of ODSs into the atmosphere; or (2) the release, although cumulatively significant, is warranted in view of the otherwise unavailable important public health benefit that the use of the drug product provides. In evaluating whether continuing the essential-use designation of an MDI would result in the product releasing significant quantities of ODSs, in light of past policy statements (2002 final rule p. 48380) and the current state of the phase-out of ODSs, the release of CFCs from epinephrine MDIs is currently significant and as the phase-out of ODSs continues throughout the world, the significance of the quantities of CFCs released by epinephrine MDIs will increase.

In applying the first part of the third criterion, we are guided by previous policy statements. The United States evaluated the environmental effect of eliminating the use of all CFCs in an environmental impact statement in the 1970s (see 43 FR 11301, March 17, 1978). As part of that evaluation, FDA concluded that the continued use of CFCs in medical products posed an unreasonable risk of long-term biological and climatic impacts (see Docket No. 1996N–0057 formerly 96N–0057). Congress later enacted provisions of the Clean Air Act that codified the decision to fully phase out the use of CFCs over time (see 42 U.S.C. 7671 *et seq.* (enacted November 15, 1990)). We note that the environmental impact of individual uses of nonessential CFCs must not be evaluated independently, but rather must be evaluated in the context of the overall use of CFCs. Cumulative impacts can result from individually minor, but collectively significant, actions that take place over a period of time (40 CFR 1508.7). Significance cannot be avoided by breaking an action down into small components (40 CFR 1508.27(b)(7)). Currently, MDIs for the treatment of asthma and COPD are the only legal use for newly produced or imported CFCs (see 71 FR 58504 (October 4, 2006)). Although it may appear to some that the CFCs released from MDIs represent insignificant quantities of ODSs, and therefore should be exempt, the elimination of CFC use in MDIs is one of the final steps in the overall phase-out of CFC use. The release of ODSs from some of the MDIs may be relatively small compared to total quantities that were released 2 or 3 decades ago, but if each use that resulted in the release of relatively small quantities of ODSs were provided an exemption, the cumulative effect would be to prevent the elimination of ODS releasing products. This would prevent the full phase-out envisioned by the Clean Air Act and the Montreal Protocol. Therefore, we tentatively conclude that the release of ODSs from epinephrine MDIs is cumulatively significant.

Given this proposed finding that the first part of the third criterion is not satisfied, the threshold for the removal of the essential-use designation for epinephrine under § 2.125(f)(1)(iii) is met if we also find that the second part of the third criterion is not satisfied: it provides an otherwise unavailable important public health benefit which warrants the cumulatively significant release of the ODS.

As noted previously, because the three criteria in § 2.125(f)(1) are linked by the word ''and,'' failure to meet any single criterion may result in a determination that the use is not essential. Accordingly, if we find that the product fails to provide an otherwise unavailable important health benefit (criterion two), this would meet the threshold under the regulation for a finding that the use of the product is not essential, and we would not necessarily need to reach the last step under the third criterion (balancing the important health benefit against the release of the ODS to determine if the release is warranted). Assuming, however that we do analyze the third criterion, then, because of our tentative conclusion that the release of ODSs from epinephrine MDIs is cumulatively significant, we would need to conduct the balancing inquiry under the second part of the third criterion. We will discuss our tentative conclusions on how the second part of the third criterion applies to OTC epinephrine MDIs in section V.C of this document.

The criteria in § 2.125(g)(2) (which refers to those found in § 2.125(f)(1)) that we are using in this rulemaking are different from those in § 2.125(g)(3) and (g)(4). Section 2.125(g)(2) specifically addresses the situation where there is no marketed non-ODS product containing the active moiety listed as an essential use, while § 2.125(g)(3) and (g)(4) apply to situations where there is at least one marketed non-ODS product with the listed active moiety. Section 2.125(g)(2) permits FDA to remove an essential use even if a current essential-use active moiety is not reformulated, provided that sufficient alternative products exist to meet the needs of patients, because the essential use would no longer provide an otherwise unavailable important health benefit. Therefore, the analysis we use here is not identical to the analysis we used under § 2.125(g)(4) in the recent rulemaking to remove the essential use for albuterol (70 FR 17168, April 4, 2005). However, the basic concern of protecting the public health underlies all of the criteria. Therefore, our analyses are similar, and we have found it useful to borrow concepts from the

more specific provisions of § 2.125(g)(3) and (g)(4) to help give more structure to our analysis under the broader language of § 2.125(f)(1).

III. Effective Date

We are proposing that any rule finalizing the removal of the essential use for OTC epinephrine MDIs have an effective date of December 31, 2010. Because there are therapeutic alternatives which are marketed as prescription drugs, in determining the appropriate effective date for this rulemaking, we will consider both: (1) Whether adequate time exists to provide patient education for users of OTC epinephrine MDIs, particularly those who do not consult doctors, pharmacists, and other health care professionals; and (2) whether adequate production capacity and supplies are available to meet the new, presumably increased, demand for the therapeutic alternatives once OTC epinephrine MDIs are no longer sold.

Patient education for any transition away from OTC epinephrine MDIs presents unique concerns. Much of the thinking about patient education on the transition from CFC MDIs has focused on the dissemination of information through physicians, pharmacists, and other health care professionals. This information could be given orally by health care professionals, or the information could be available in the professionals' offices or pharmacies for patients to read. Because epinephrine MDIs are sold OTC, many purchasers will not interact with a health care provider. New avenues of communication will have to be opened to reach all OTC epinephrine MDI users. Many OTC epinephrine MDI users may need to be provided information to help them select a physician. Some OTC epinephrine MDI users who face economic barriers to appropriate health care may need even more time to find and avail themselves of free or low-cost health care and prescription drug programs (see section V.B.2.b of this document). These factors have led us to believe that a transition away from OTC epinephrine MDIs may be more difficult than transitions in which patients change from one prescription drug to another prescription drug, and accordingly that any effective date for such a rulemaking should provide for a longer transition period than the transition period for the recently published proposed rule to eliminate the essential-use designation for MDIs containing flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil (72 FR 32030, June 11, 2007). We have, therefore, tentatively concluded that the December 31, 2010, effective date would be appropriate for a final rule removing the essential-use designation for OTC epinephrine MDIs. We invite comment on the proposed effective date of December 31, 2010, as well as possible alternative effective dates, such as December 31, 2011 or 2012.

In determining an appropriate effective date, we have kept in mind that albuterol MDIs that use the hydrofluoroalkane HFA–134a (HFA) as a propellant are a primary therapeutic alternative to OTC epinephrine MDIs, because both drugs are in the same therapeutic class (short-acting inhaled beta-agonist bronchodilators), albuterol is the only member of the class available in an HFA MDI, and no members of the class are available as a DPI.[8] Sales of OTC epinephrine MDIs have totaled approximately 4.5 million MDIs a year. We are confident that there will be adequate supplies of albuterol HFA MDIs to meet the needs of all users of albuterol CFC MDIs by December 31, 2008 (the date on which albuterol MDIs will no longer be designated an essential use).[9] Although we have limited data on production increases above current demand for 2009, 2010, and later, we believe that by December 31, 2010, albuterol HFA production will be able to meet any increased demand caused by this rulemaking. This proposed effective date is 1 year later than the effective date that we proposed in the recently published proposed rule to eliminate the essential-use designation for MDIs containing flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil (72 FR 32030, June 11, 2007). As we said in that proposed rule, many of the patients using some of those drugs would switch to albuterol HFA inhalers. We believe that the additional time required for the needed patient education on alternatives to OTC epinephrine MDIs will also provide additional time to scale up production of albuterol HFA MDIs. This additional time should provide greater assurance that there will be adequate supplies of albuterol HFA MDIs for all patients who use them. We specifically invite comments from manufacturers of albuterol HFA MDIs on this issue.

In proposing a December 31, 2010, effective date, we expect that 2010 would be a transition year characterized by declining production of OTC epinephrine MDIs. If a December 31, 2010, effective date is established by this rulemaking, we anticipate that other administrative actions taken by EPA and FDA would reflect the concept of 2010 being a transition year.

The sale of remaining stocks of CFC MDIs by manufacturers, wholesalers, and retailers was a consideration in setting the effective date of the albuterol rule (70 FR 17168, 17179, April 4, 2005). We believe that this consideration is appropriate for this rulemaking also. In evaluating the period of time needed to sell remaining stocks of OTC epinephrine MDIs, a factor that must be considered is the expiration dating for the relevant products. Both PRIMATENE MIST and the OTC epinephrine MDIs made by Armstrong Pharmaceuticals, Inc. (Armstrong) have expiration dates set at 24 months after manufacture. Drug products are not generally sold right up to the expiration date. Drugs are generally sold well before the expiration date, allowing the purchasers a significant amount of time to use the drug before it reaches its expiration date; therefore, we believe that all OTC epinephrine MDIs manufactured prior to publication of a final rule based on this proposal should be sold by December 31, 2010.

We are tentatively proposing a December 31, 2010, effective date based on our preliminary assumption that there will not be an inhaled epinephrine OTC drug product that does not contain ODSs on the market in the foreseeable future. We strongly urge interested individuals to submit detailed information on whether inhaled-epinephrine will be available in a non-ODS formulation and when a non-ODS inhaled epinephrine product can reasonably be expected to be on the market. We also specifically request comment on whether publishing a final rule or the effective date of any such rule should be affected by the additional information that we receive concerning the availability of an inhaled epinephrine OTC drug product that does not contain ODSs.

IV. 2006 NDAC/PADAC Meeting

Section 2.125(g)(2) requires that we consult an advisory committee before we remove an essential-use designation when there is no non-ODS product with the same active moiety. We consulted the Nonprescription Drug Advisory

[8] Neither HFA MDIs nor DPIs release ODSs. HFA MDIs and DPIs are generally considered to be the non-ODS drug products that are most comparable to CFC MDIs in terms of portability and ease of use.

[9] Current information indicates that production of albuterol HFA MDIs will be adequate to meet the current demand for albuterol MDIs much earlier than December 31, 2008.

Committee (NDAC) and the Pulmonary-Allergy Drugs Advisory Committee (PADAC) on the essential-use status of OTC MDIs containing epinephrine at a joint committee meeting held on January 24, 2006 (NDAC/PADAC meeting).[10] Presentations were made by representatives of Wyeth Consumer Health (Wyeth), two patient advocacy and public policy groups, and physician organizations. Seven of the joint committee members recommended that epinephrine be retained as an essential use, while eleven members recommended that the essential-use designation be removed. The opinions expressed by the NDAC and PADAC (NDAC/PADAC) members and other participants in the NDAC/PADAC meeting will be discussed below.

This NDAC/PADAC meeting should not be confused with the open public meeting on the essential-use status of OTC MDIs containing epinephrine we will be holding in the near future. We will publish a notice for that meeting in the **Federal Register** shortly.

V. Epinephrine

Epinephrine is a short-acting adrenergic bronchodilator used in the treatment of asthma. A new drug application (NDA) for OTC epinephrine MDIs was approved in 1956. Epinephrine was included in the 1978 rule under the provision designating ''[m]etered-dose adrenergic bronchodilator human drugs for oral inhalation'' as an essential use. Approved NDAs for OTC epinephrine MDIs are currently held by Wyeth and Armstrong, (a subsidiary of Amphastar Pharmaceuticals, Inc.). Wyeth markets their OTC epinephrine MDIs as PRIMATENE MIST, while Armstrong labels their product as ''house brands'' for certain retail pharmacies. Epinephrine MDIs are the only MDIs for treatment of asthma (or any other disease) that are approved for OTC use.[11] Customers do not need a prescription from a health care provider to purchase OTC epinephrine MDIs. Wyeth presented data at the NDAC/PADAC meeting estimating that 2 to 3 million people with asthma use OTC epinephrine MDIs (meeting transcript p. 51, Wyeth slide 19). Based on the 2005 National Health Interview Survey (NHIS), the Centers for Disease Control and Prevention's National Center for Health Statistics (NCHS) has estimated that 7.7 percent of the U.S. population currently has asthma (Ref. 1). Using an estimate of the U.S. population of 300 million,[12] we can estimate that approximately 23 million people in the United States currently have asthma.

Epinephrine is also an active ingredient in many other drug products. It is used in a self-injectable dosage form for treatment of severe allergic reactions. EPIPEN is an example of epinephrine in this dosage form. Epinephrine is also available OTC as a solution for use in an electrically powered nebulizer for the treatment of asthma. This rulemaking will not affect the availability of these non-MDI drug products.

A. Do Substantial Technical Barriers Exist to Formulating Epinephrine Products Without ODSs?

As we said in the 2002 final rule, we intend the term ''technical barriers'' to refer to difficulties encountered in chemistry and manufacturing. To demonstrate that substantial technical barriers exist, it will have to be established that all available alternative technologies have been evaluated and why each alternative is unusable (2002 final rule at 48373). Wyeth did not present any significant data on technical barriers to formulating an inhaled epinephrine product without ODSs at the NDAC/PADAC meeting. At the NDAC/PADAC meeting, Wyeth said that they had been trying to reformulate or outsource their product for over a decade and mentioned unacceptable prototypes, but they mentioned that a significant difficulty in reformulation was avoiding designs that would infringe patents held by 3M Co. (3M) and GlaxoSmithKline (GSK) (meeting transcript, pp. 86–88). It should be kept in mind that patent licenses and contract manufacturing by patent holders have been very frequently used during the current transition away from CFC MDIs. An example of this is 3M's manufacture of, and patent licensing for, albuterol HFA MDIs. 3M holds patents on HFA MDI technology and it also manufactures PROVENTIL HFA (albuterol) MDIs for sale by Schering Corporation (Schering). Ivax Corp. has licensed HFA MDI technology patents from 3M and manufactures PROAIR HFA (albuterol) MDIs. We have not been presented with any evidence that Wyeth could not obtain patent licenses or arrange for contract manufacturing by a patent holder.

At least nine different active moieties have been formulated as HFA MDIs for the treatment of asthma and COPD in the United States and abroad.[13] HFA MDIs have been formulated with both suspensions and solutions. Albuterol and levalbuterol are close chemical analogs of epinephrine. Given the chemical similarity between them and the success with reformulating albuterol (as albuterol sulfate in PROAIR HFA, PROVENTIL HFA, and VENTOLIN HFA) and levalbuterol (as levalbuterol tartrate in XOPENEX), there appears to be no technical reason why epinephrine cannot be successfully reformulated into an HFA MDI. Wyeth said at the NDAC/PADAC meeting that early attempts to formulate an epinephrine HFA MDI were characterized by higher pressures and quantities of alcohol that provided unacceptable sensations to users of the product, including an unpleasant taste of alcohol[14] (Wyeth briefing material, p. 1–7; meeting transcript, p. 87). These do not seem to represent technical barriers; rather they seem to be the type of problems routinely encountered in the development of a new product that require prototypes to be reengineered. Indeed, Wyeth did not seem to truly believe that there were technical barriers to development of an epinephrine HFA MDI, predicting that they would have a product developed and clinically tested by 2011, and attributing their earlier difficulties to a lack of in-house expertise (Wyeth briefing material, p. 1–7). FDA has had experience with several firms reformulating products from ODS containing MDIs to non-ODS products. Based on our experience with those reformulation efforts, it seems highly unlikely that a non-ODS inhaled epinephrine drug product will be

[10] The transcript of the NCPAC/PADAC meeting, slides used in presentations made at the joint meeting, and written material presented to the committees for the meeting may be found at *http://www.fda.gov/ohrms/dockets/ac/cder06.html*.

[11] The OTC monograph for Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products permits OTC marketing of epinephrine in a hand-held rubber nebulizer for use in the treatment of asthma (21 CFR part 341). While this product did not use CFCs, all of the information available to us shows that such products are no longer marketed. The OTC monograph for Cold, Cough, Allergy, Bronchodilator, and Antiashtmatic Drug Products permits OTC marketing of oral dosage forms of ephedrine. Ephedrine is not available in an MDI. In addition, OTC ephedrine products have a slower onset of action than epinephrine MDIs, and therefore they cannot be considered a suitable alternative to OTC epinephrine MDIs.

[12] The U.S. Census' estimate of the U.S. Population was 299,948,296 as of October 10, 2006, 1804 GMT, with an estimated net increase in the population of 1 person every 11 seconds. See *http://www.census.gov/population/www/popclockus.html*.

[13] The nine moieties formulated as HFA MDIs are albuterol, beclomethasone, budesonide, fenoterol, fluticasone, flunisolide, formoterol, ipratropium, and salmeterol. While a salmeterol DPI (SEREVENT) has been approved in the United States, salmeterol HFA MDIs have only been approved overseas. There are no approved fenoterol or formoterol products in the United States, but fenoterol HFA MDIs and formoterol HFA MDIs have been approved in several foreign countries.

[14] PRIMATENE MIST contains 35 percent alcohol and other MDIs also contain alcohol. Wyeth did not reveal the amount of alcohol in their prototype or explain why the amount of alcohol could not be reduced or the taste otherwise minimized.

developed and clinically tested until well after 2011. As we mentioned before, we are particularly interested in receiving comment on current efforts on developing non-ODS inhaled epinephrine drug products that would be suitable for OTC sale, including any discernible impediments to such efforts.

Wyeth said that an epinephrine DPI was not a viable alternative to the epinephrine MDI, but without any elaboration (Wyeth briefing material, p. 1–7). The DPI has proven to be a very successful dosage form. At least nine different moieties have been formulated as DPIs for treatment of asthma and COPD in the United States or overseas.[15] Alkermes, Inc., developed a large dose epinephrine DPI for investigations into using an epinephrine DPI for treatment of anaphylaxis. While this product has not been approved by FDA and it is not intended for the treatment of asthma, it does show that epinephrine can be formulated into a DPI (Refs. 2 and 3).

Thus, all of the evidence before us indicates that epinephrine can be formulated into a drug product that does not release ODSs. The facts presented by Wyeth at the NDAC/PADAC meeting did not indicate that there are technical barriers to the development of a non-ODS epinephrine product, despite the conclusions that Wyeth presented at the meeting. However, as noted previously, we are especially interested in receiving public comment concerning any such technical barriers that may exist.

B. Do OTC Epinephrine MDIs Provide an Otherwise Unavailable Important Public Health Benefit?

Because we have reached a tentative conclusion that there are no substantial technical barriers to formulating epinephrine into a non-ODS product, we do not believe it is necessary at this time to reach a conclusion on the public health benefits of OTC epinephrine MDIs. However, this issue was discussed at length at the NDAC/PADAC meeting and we are keenly interested in the potential public health benefits of having epinephrine MDIs available OTC. We will evaluate and weigh those public health benefits before issuing any final rule on the essential-use designation for epinephrine. Accordingly, we will discuss some of the questions on which we would be particularly interested in receiving comments that would be relevant in reaching a conclusion on the public health benefits of OTC epinephrine MDIs.

1. Does Epinephrine Provide a Greater Therapeutic Benefit Than Similar Adrenergic Bronchodilators?

During the last several years, four prescription HFA MDIs with two different forms of albuterol have come onto the market:

- Albuterol sulfate MDI (PROAIR HFA);
- Albuterol sulfate MDI (PROVENTIL HFA);
- Albuterol sulfate MDI (VENTOLIN HFA); and
- Levalbuterol tartrate MDI (XOPENEX HFA).

These products use HFA as a replacement for ODSs, which does not affect stratospheric ozone. Albuterol and epinephrine are both adrenergic bronchodilators. Albuterol MDIs are therapeutic alternatives to OTC epinephrine MDIs and are, by far, the most widely prescribed short-acting bronchodilators. To determine whether epinephrine provides an otherwise unavailable important public health benefit, we should compare OTC epinephrine MDIs to albuterol HFA MDIs. The labeled indication for the OTC epinephrine MDIs is ''for temporary relief of occasional symptoms of mild asthma.'' The comparable labeled indication for the albuterol HFA MDIs is ''for treatment or prevention of bronchospasm with reversible obstructive airway disease.'' OTC epinephrine MDIs and three of the albuterol HFA MDIs are indicated for adults and children 4 years of age and older.[16] The labeled indications for the albuterol HFA MDIs cover all patients described in the labeled indication for OTC epinephrine MDIs.

Clinical data presented by a representative of Wyeth at the NDAC/PADAC meeting indicated that OTC epinephrine MDIs may be slightly quicker to onset of action than albuterol MDIs, but they have a significantly shorter duration of action (Wyeth briefing statement at p. 1–9). The slightly quicker onset of action may explain why some people with asthma describe OTC epinephrine MDI as working better than prescription drugs. The slightly quicker onset of action is a pharmacodynamic assessment, but there are no clinical data to support a conclusion that this perceived quicker relief provided by epinephrine leads to better outcomes. Therefore, we do not believe that this represents a ''otherwise unavailable important public health benefit.''

Wyeth presented another study of the treatment of nocturnal asthma that concluded that OTC epinephrine MDIs can ''achieve the same benefit as albuterol'' MDIs (Ref. 4, p. 533).[17] However, as pointed out by NDAC/PADAC members, the frequency of doses of epinephrine used in this study were several times the amount approved in labeling (this was also true, but to a smaller degree, for albuterol in this study).[18] Further, this was a limited study with only eight subjects completing the evaluations. These elements made the utility of this study for purposes of this rulemaking very questionable, and even if these questions were ignored, the study shows, at best, that epinephrine is roughly as effective as, but not more effective than, albuterol.

In the United States, the generally recognized standard of care for asthma is set forth in the National Heart, Lung, and Blood Institute's Expert Panel Report 2: Guidelines for the Diagnosis and Management of Asthma (EPR–2) (Ref. 5).[19] The National Heart, Lung, and Blood Institute is one of the National Institutes of Health. In the 2002 update to EPR–2 (Ref. 6), we find the latest updates to the standard.

In several points in Wyeth's written, oral, and visual presentation for the NDAC/PADAC meeting, it was stated that use of epinephrine was consistent with the National Heart, Lung and Blood Institute's asthma treatment guidelines (Ref. 5) (frequently called the second Expert Panel Report or EPR–2), issued as part of the National Asthma

[15]The nine moieties formulated as DPIs are albuterol, beclomethasone, budesonide, fluticasone, formoterol, mometasone, salmeterol, terbutaline, and tiotropium. While albuterol HFA MDIs have been approved in the United States, albuterol DPIs are not currently marketed in the United States, but are approved overseas. A terbutaline CFC MDI and other terbutaline products have been approved in the United States, but terbutaline DPIs have only been approved overseas. There are no approved formoterol products in the United States, but formoterol DPIs have been approved in several foreign countries.

[16]PROAIR HFA is indicated for adults and children 12 years of age and older.

[17]The author of the study report did not appear to view the study as supporting the OTC use of epinephrine MDIs, stating that the results of the study do not imply that it is safe for people with asthma to self-medicate without physician intervention and that results of the study indicate that nonprescription epinephrine presents the same risk of delaying patients from seeking medical care as other beta-agonists. The report concluded with a statement that a larger study is required before epinephrine can be recommended as rescue therapy when a prescription beta$_2$-agonist MDI is not accessible (Ref. 3).

[18]The author of the study report recognized that the large number of actuations might be impractical (Ref. 43).

[19]The Guidelines represent best practices and are recognized as the clinical standard of care for treatment of asthma. See, e.g., *http://www.asthmanow.net/care.html*; *http://www.colorado.gov/bestpractices/index.html*; *http://www.doh.wa.gov/CFH/asthma/publications/plan/health-care.pdf*.

Education and Prevention Program.[20] The EPR–2, as updated, is widely seen as representing the generally recognized standard of care for asthma in the United States.[21] Wyeth stated in its written materials that epinephrine is not mentioned specifically in the EPR–2 (Wyeth briefing material, p. 1–8; meeting transcript, pp. 50–51; Wyeth slide 18). FDA disagrees with these statements. The 2002 update to the EPR–2 states that ''[n]onselective agents (i.e., epinephrine, isoproterenol, metaproterenol) are not recommended due to their potential for excessive cardiac stimulation, especially in high doses'' (Ref. 6, p. 120). While recognizing the possibility that the concerns expressed in the EPR–2 about cardiovascular risk may be overstated (see Refs. 4 and 9), we do not need to reach a conclusion on the relative cardiovascular risk of the use of epinephrine compared to the use of albuterol. FDA is unaware of any evidence comparing epinephrine and albuterol at recommended doses indicating that the cardiovascular safety of epinephrine is better than that of albuterol.

A voting consultant with NDAC characterized the OTC epinephrine MDI as an ''inferior medicine'' (meeting transcript, p. 181). She admitted there was an absence of good data on the safety and efficacy of OTC epinephrine MDIs. Her opinions were shared by many members of the committees. NDAC/PADAC members who recommended that the essential use for OTC epinephrine MDIs be retained did not state that epinephrine was safer or more effective than albuterol. The evidence before us indicates that epinephrine is not safer or more effective than albuterol. The EPR–2 recommends against epinephrine's use. The consensus opinion at the NDAC/PADAC meeting was that OTC epinephrine MDIs presented no significant therapeutic advantage over albuterol MDIs. This leads us to tentatively conclude that OTC epinephrine MDIs do not provide a clinical benefit that is otherwise unavailable. If we intended to draw a conclusion about the public health benefits of OTC epinephrine MDIs, and if OTC epinephrine MDIs were prescription drugs, as albuterol HFA MDIs are, our analysis would be nearly complete. However, the epinephrine MDIs, PRIMATENE MIST and the Armstrong products, are the only MDIs for treatment of asthma that are marketed OTC. We, therefore, have to examine more questions on the possible public health benefits of the continued OTC marketing of epinephrine CFC MDIs.

2. Does OTC Marketing of Epinephrine MDIs Provide an Important Public Health Benefit?

Our discussion on the public health benefit of OTC marketing of epinephrine is largely informed by the data presented and the opinions expressed at the NDAC/PADAC meeting.

a. *Is patient convenience an important public health benefit*? Wyeth asserted at the NDAC/PADAC meeting that the convenience of patients having an OTC MDI for asthma provides an ''important public health benefit'' (meeting transcript, p. 66). Having this OTC product available would allow patients who run out of their prescribed medication and cannot get a refill authorization from their physician to go to the local store and purchase OTC epinephrine MDI. Wyeth presented data from a survey they had conducted indicating that one-third of OTC epinephrine MDI users use it as their sole asthma medication, while two-thirds use it in addition to prescription drugs. The survey indicated that 55 percent of people with asthma who solely use OTC epinephrine MDIs for their asthma said that the OTC product is ''easier and quicker to obtain.'' Fifty-eight percent of asthma patients who use both prescription drugs and OTC epinephrine MDIs say they purchase the OTC MDI when they either ''run out of my prescription medication'' or ''have an asthma attack and I don't have my prescription with me'' (Wyeth slide 36).

Maintaining current valid prescriptions and supplies of prescribed drugs is a regular and sometimes onerous, but necessary, task for many patients with chronic diseases. It would certainly be more convenient for all of these patients if some sort of therapeutic alternative were available OTC. However, there are no OTC remedies for most serious diseases. Of note, patients with anaphylaxis to bee stings or peanuts can face sudden, life-threatening attacks if exposed to their relevant triggers. Yet epinephrine autoinjectors, such as EPIPEN, are not OTC products because of considerations that include the proper evaluation and treatment of such patients. No evidence has been presented to us, in the course of this rulemaking, to indicate how asthma differs from other serious diseases in a way that warrants having an OTC treatment available.

These facts would support a conclusion that any added convenience of OTC availability of epinephrine for patients who have been prescribed drugs for the treatment of asthma, such as albuterol MDIs, does not provide an ''important public health benefit.''

b. *Do OTC epinephrine MDIs provide an important health benefit for people who have poor access to adequate health care*? Wyeth and several members of NDAC and PADAC have stated that a significant number of people with asthma do not have adequate access to health care, and a significant number of these people with asthma use OTC epinephrine MDIs. To examine the public health benefit of OTC marketing of epinephrine MDIs we must examine (1) The number of people with asthma who use epinephrine because of inadequate access to health care providers able to diagnose asthma and prescribe treatments other than epinephrine, and (2) the extent that OTC epinephrine benefits these people. We are particularly interested in the public health benefits that may be provided to this population by having epinephrine MDIs available OTC. Any final conclusion we reach on the essential-use designation of epinephrine could be affected by data on the public-health benefit contained in comments submitted in response to this proposed rule.

Wyeth presented information at the NDAC/PADAC meeting from their 2005 survey indicating that 22 percent of people with asthma did not have health insurance (Wyeth slide 31). Statistics from NCHS (Ref. 10) indicate that slightly less than 14.1 percent of the general population does not have health insurance. While the difference between 14.1 percent and 22 percent is not significant for purposes of this document,[22] it may be true that the percentage of people with asthma who are uninsured is higher than that of the general population. Wyeth also presented data indicating that 27 percent of people with asthma do not have health insurance that provides prescription drug benefits (Wyeth slide

[20]EPR–2 was updated in 2002 (Ref. 6) (EPR—Update 2002). References to outside publications or any other statements of fact or opinion in this document concerning a drug product are not intended to be equivalent to statements in labeling approved under section 505 of the act (21 U.S.C. 355) and part 314 of FDA regulations (21 CFR part 314).

[21]The EPR–2 is very similar to other published standards of care (See the *Australian Asthma Management Handbook: 2002* (Ref. 7) and the ''Canadian Asthma Consensus Report, 1999'' (Ref. 8).

[22]The reason we say that the difference is not significant for purposes of this document is that so many of the numbers discussed represent such broad estimates that the difference between 14 percent and 22 percent would not affect any conclusion. We are acutely aware that for the individuals and families involved, absence of health insurance is very significant.

31). However, lack of insurance does not necessarily equate to poverty and financial barriers to adequate health care. Approximately 18 percent of uninsured Americans have household incomes of $75,000 or more, and another 17 percent have household incomes of $50,000 to $74,999 (Ref. 11).

Other barriers to health care exist, such as lack of sick leave, transportation, and child care. However, we do not have any data that would be useful in determining how these barriers affect people with asthma and their use of OTC epinephrine MDIs.

There is very little data about how barriers to health care affect use of OTC epinephrine MDIs. According to data provided by Wyeth, roughly two-thirds of OTC epinephrine MDI users use the MDIs in addition to prescription drugs, while one-third solely use OTC epinephrine MDIs (Wyeth slide 32). As discussed in section V.B.2.b of this document, a majority of the two-thirds of OTC epinephrine MDI users who also use prescription drugs do so for reasons of convenience. However, because the two-thirds of OTC epinephrine MDI users who also use prescription drugs apparently have adequate access to health care, we will focus, for this part of the document, on the one-third of OTC epinephrine MDI users who solely use OTC epinephrine MDIs. We have very little data on why patients use OTC epinephrine MDIs instead of prescribed drugs. At the NDAC/PADAC meeting Wyeth presented data from their 2005 Internet survey of people with asthma (Wyeth slide 35). The data are summarized in table 1 as follows:

TABLE 1.—MOST FREQUENT REASONS CITED BY SOLE OTC EPINEPHRINE MDI USERS

''Easier and quicker to obtain''	55 percent
''More reasonably priced''	41 percent
''I don't have health insurance''	25 percent
''I don't want to go to a doctor''	25 percent
''I don't have a doctor''	21 percent
''OTC drugs work better for me''	11 percent

The basis for the ''more reasonably priced'' response in the survey is unclear. While the perception of a percentage of the survey participants may have been that OTC epinephrine was less costly, an accurate determination of the relative price of the OTC product compared to the prescription substitutes would require a complex analysis which could not be embodied in an informal Internet opinion survey. For example, it is not clear how respondents calculated the retail price of the prescription drug products that they compared to OTC epinephrine, if they were comparing comparable drug products, or the degree to which they factored health insurance co-payments or the availability of patient assistance programs into their price comparison. It is also unclear if the respondents viewed the cost of a visit to a physician to obtain a prescription as a part of the price of a prescription drug. Because it is not clear what this response actually means, it contributes little to our analysis of the possible public health benefits of epinephrine.

As discussed at length at the NDAC/PADAC meeting, the response in the survey that ''OTC drugs work better for my asthma'' is not supported by adequate and well-controlled studies.

The responses that may best inform an attempt to reach a low-end estimate of the percentage of people who solely use OTC epinephrine MDIs who do so because of barriers to health care are ''I don't have health insurance'' (25 percent), ''I don't want to go to a doctor'' (25 percent), and ''I don't have a doctor'' (21 percent). Those stating absence of health insurance are describing a potential barrier to health care. The other two statements are more ambiguous. ''I don't want to go to a doctor'' may be an expression of a general aversion to going to doctors, it may be a manifestation of a desire not to confront a potentially serious illness, or it also may reflect that an asthmatic may not wish to go to a doctor because of lack of insurance or other barriers to health care. ''I don't have a doctor,'' may be similar to ''I don't want to go to a doctor,'' or it may reflect a person who has not yet chosen a doctor, because of a recent arrival in a locality or because the person has stopped seeing a previous doctor.

The survey participants were permitted to select more than one reason for solely using an OTC epinephrine MDI. While we know that participants gave more than one answer (the sum of the answers is 178 percent), we do not know how the responses overlapped with each other. We will assume, for now, that the 25 percent responding ''I don't have health insurance'' represents users of OTC epinephrine who do so because of barriers to health care. We realize that this may underrepresent those people with asthma whose responses of ''I don't want to go to a doctor,'' and ''I don't have a doctor'' also reflected a barrier to health care. However, any underestimation may be counterbalanced by other factors, such as:

- Approximately 18 percent of uninsured Americans have household incomes of $75,000 or more, and another 17 percent have household incomes of $50,000 to $74,999 (Ref. 11). While uninsured, these people would not necessarily face barriers to health care.
- According to Wyeth's 2005 Internet survey, 28 percent of people with asthma who solely use OTC epinephrine MDIs have visited a doctor in the previous year for treatment of asthma; these patients presumably have access to health care.

We do not know how these two points relate to the numbers from Wyeth's 2005 Internet survey giving the reasons that people with asthma purchase OTC epinephrine MDIs. As was frequently noted at the NDAC/PADAC meeting, the debate over the essential-use status of epinephrine is hobbled by a paucity of data, and we note here that we are especially interested in receiving public comments and any available data concerning this issue. The fact that this is an Internet survey, and that we know little about how the survey was conducted, raises questions about its reliability. However, in the absence of better data, we estimate that 25 percent of people with asthma who solely use OTC epinephrine MDIs for treatment of asthma do so because of barriers to

health care. Since two-thirds of people who use OTC epinephrine MDIs also use prescription drugs to treat their asthma, somewhat less than 9 percent of all people with asthma using OTC epinephrine MDIs do so because of barriers to health care. These figures appear to be the best low-end estimate we can derive from the limited data we have before us. Referring to their 2005 Internet survey, Wyeth stated that 60 percent of people with asthma solely using OTC epinephrine MDIs replied that they had a ''prescription medication coverage plan'' (Wyeth slide 33). This figure is lower than the 66 percent who replied that they had insurance covering physicians visits. This means that approximately 40 percent of OTC epinephrine MDI users who solely use the product did not have prescription drug coverage. This seems a reasonable high-end estimate of the percentage of people with asthma solely using OTC epinephrine MDIs who do so because of barriers to health care. This estimate is over-inclusive because it includes people with asthma whose income would mean that absence of insurance does not present a barrier to health care and patients with asthma that have access to free or low-priced drugs through doctor's samples or free and low-priced drug programs. The fact that lack of insurance coverage for prescription drugs does not perfectly reflect barriers to health care is shown by the fact, according to Wyeth's 2005 survey, that 19 percent of asthma patients who solely use prescription drugs do not have insurance coverage for prescription drugs. While it is over-inclusive for some groups, the higher figure may do a better job of capturing people who face other poorly quantified barriers to health care, such as lack of sick leave, transportation, or child care.

We have arrived at an estimate that between 25 percent and 40 percent of people with asthma who solely use OTC epinephrine MDIs, and therefore between 9 percent and 14 percent of all people with asthma that use OTC epinephrine MDIs, do so because of barriers to health care. We have also estimated that 1.7 to 2.3 million people with asthma use OTC epinephrine MDIs. This estimate is based on data provided by Wyeth at the NDAC/PADAC meeting, although Wyeth reached a different conclusion based on the same numbers.[23] Applying our estimate that between 9 percent and 14 percent of all people with asthma who use OTC epinephrine MDIs do so because of barriers to health care to our estimate that 1.7 to 2.3 million people with asthma use OTC epinephrine MDIs, we arrive at an estimate that between 150,000 and 320,000 people with asthma who use OTC epinephrine MDIs do so because of barriers to health care. At the NDAC/PADAC meeting, a representative for several Hispanic-American health policy organizations presented information about the high incidence of asthma among Hispanic-Americans and African-Americans (meeting transcript, pp. 162 to 169). The representative opposed removing epinephrine's essential-use designation, stating that it would have a serious adverse impact on people with asthma who face barriers to health care, and that this impact would be disproportionately felt by Hispanic-Americans.

According to the 2002 NHIS (Ref. 12), 7.2 percent of Non-Hispanic Whites in the United States had asthma, while the prevalence of asthma in Non-Hispanic Blacks was 9.5 percent and the corresponding figure for Non-Hispanic American Indians was 9.9 percent. The incidence of asthma among all Hispanics in the United States (4.9 percent) was lower than the incidence for the general population (7.2 percent), but the rate for Puerto Ricans was markedly higher at 13.1 percent.

The National Health Care Disparities Report (Ref. 13) (2005 NHCDR) (which was mentioned by the speaker), indicates that Hispanic-Americans have significantly worse access to health care in terms of numbers of uninsured persons (Ref. 13, p. 92) having a usual source of care (a facility where one regularly receives care) (Ref. 13, p. 94), and having a usual primary care provider (a doctor or nurse from whom one regularly receives care) (Ref. 13, p. 95). Other portions of the 2005 NHCDR provide information about asthma counseling in community health centers (Ref. 13, p. 135) and hospital admissions for pediatric asthma (Ref. 13, p. 150). None of the data in the 2005 NHDCR refer directly to the use of OTC epinephrine MDIs, so drawing specific conclusions from the 2005 NHCDR is difficult and subjective.

Results from the National Cooperative Inner City Asthma Study (NCICAS) were referred to at the NDAC/PADAC meeting. NCICAS was sponsored by the National Institute of Allergy and Infectious Diseases (NIAID). NCICAS studied a treatment strategy for children with asthma living in inner-city census tracts where at least 20 percent of the population was below federal poverty guidelines. The study was conducted in eight study units located in seven cities across the United States. Wyeth presented information from a report from NCICAS, showing that 53 percent of the participants in the study reported difficulties in obtaining short term care for their children's asthma (Ref. 14). Ninety-three percent of the families studied in NCICAS were insured, largely by Medicaid, and while 50 percent of the families studied had to pay for health care (presumably a co-payment for most of the families), only 8 percent reported ''care costs too much'' as a barrier to health care. The intervention studied in the NCICAS was described as effective by one of the lead investigators (Ref. 15). Failure to refill prescriptions for asthma drugs was mentioned by Wyeth at the NDAC/PADAC meeting (meeting transcript, p. 113). Another report from NCICAS shows that 16 percent of caregivers reported not having a prescription filled for the child with asthma for whom they were caring (Ref. 16). This number compares favorably with compliance rates found in the general population.[24] People do not always have prescriptions filled or take their medicine, regardless of income or health insurance.

Dr. Carolyn Kercsmar, who participated in the NCICAS and is a member of PADAC, responded to Wyeth's description of the data from the NCICAS by saying, ''* * *[the children with asthma and the caregiver's] access were problems and didn't prevent them, it just hindered their care, and it was not just for acute care. It was for problems in accessing chronic care. Also, in that study, the vast majority of the patients had medication prescribed including albuterol as part of that study.* * *'' (meeting transcript, p. 141).

[23] At the NDAC/PADAC meeting Wyeth presented estimates that 15 to 20 percent of adults with asthma use OTC epinephrine (Wyeth slide 32). Applying these percentages to the number of adults who have asthma, they estimated that 2 to 3 million people use OTC epinephrine MDIs at any given time. Wyeth appears to have made a mistake. If we look at the 1993 ACNielsen study (Wyeth slide 29) where the study population was adults, it appears that Wyeth compared the number of respondents who reported using an OTC asthma drug (557) to the number of respondents who reported having an asthma incident in the previous 12 months (2,713). If we divide 557 by 2,713, we get 0.205 or 20 percent. The number of adults who have asthma is substantially higher than the number who have had an asthma incident in the previous 12 months; for 2004 the numbers are 14.4 million and 7.7 million respectively (Ref. 35). Applying 15 to 20 percent to the number of adults with asthma would result in a significant inflation of the number of OTC epinephrine MDI users. Applying 15 to 20 percent to the number of adults who have had an asthma incident in the previous 12 months gives us an estimate of 1.7 to 2.3 million people using OTC epinephrine MDIs. We believe that this estimate is more accurate than the 2 to 3 million estimate.

[24] See Refs. 17 and 18. The various studies used different methods of measuring non-compliance, so direct numeric comparisons are not possible.

The NCICAS data do not show that the availability of OTC epinephrine is needed for adequate treatment of asthma in poor inner-city areas. While recognizing that the patient population studied was largely insured, we believe that comparable health care access options for low-income, non-insured patients are widely available. Programs that offer free or low-cost drugs, such as Schering's ''SP Cares program'' (see *www.schering-plough.com/schering_plough/corp/sp_cares.jsp*), and organizations that provide more comprehensive health care free or at low-cost, such as Communicare in South Carolina or the Puget Sound Neighborhood Health Centers in Washington, should be able to help lower economic barriers to access for people with asthma who use OTC epinephrine MDIs. Although we do not believe that all of the people currently using OTC epinephrine MDIs due to economic barriers to health care can or will avail themselves of these programs, we do believe that these programs are widely available, and that they can provide adequate alternatives to OTC epinephrine MDIs for many people with asthma. This should minimize some of the adverse impacts that may result from the absence of OTC epinephrine MDIs.

In looking at the issue of OTC epinephrine MDIs as an alternative for people with asthma who face barriers to health care, it should be kept in mind that the retail price of OTC epinephrine MDIs is also a barrier to health care. In comparing the price of OTC epinephrine to that of its alternatives, we must keep in mind that OTC epinephrine MDIs, which cost approximately $13 per inhaler (meeting transcript, p. 127), are not available through any low-cost drug plans. Prescription drugs obtained through these programs can be substantially less expensive than OTC epinephrine MDIs. To give one example, an eligible person obtaining VENTOLIN HFA (albuterol MDI) through GSK's ''Bridges to Access'' program would make a $10 co-payment for a 60-day supply of the drug; after 60 days no further co-payment is required (see *http://bridgestoaccess.gsk.com/index.html*). OTC epinephrine MDIs are more expensive than prescription drugs for people who can and do avail themselves of low-cost drug programs such as ''SP Cares'' and ''Bridges to Access.''

A public speaker representing an asthma education and advocacy organization before the NDAC/PADAC meeting said that the longer duration of effect of albuterol and levalbuterol (and other newer prescription drugs that do not release ODSs) means that, while these drug are more expensive per MDI and per dose, they may be cheaper than OTC epinephrine MDIs when the price is calculated for each hour of relief (meeting transcript, pp. 159–160). While a drug's duration of action can affect the cost to a patient (or other payor) for therapy with the drug, we do not have the comparative clinical data to confirm the assertion made by the speaker.

We believe that a small population of people with asthma who face barriers to health care may derive some benefit from having epinephrine MDIs available OTC. We also believe that utilization of programs providing low-cost or free prescription drugs may reduce, but not eliminate, the number of people with asthma facing barriers to health care who depend on OTC epinephrine MDIs. We are keenly interested in, and request comments on, the public health effect and costs that may result from the removal of OTC epinephrine MDIs from the market and how these programs may reduce any adverse impact on the public health. We will take under consideration and weigh carefully the potential consequences identified in public comments before issuing any final rule. In assessing the public health benefits of OTC epinephrine MDIs, the benefits of having the drug available OTC must be balanced against the potential risks, if any.

c. *Do risks of self-treatment of asthma outweigh the public health benefits that OTC epinephrine MDIs may provide*? Much of the discussion at the NDAC/PADAC meeting focused on the issue of whether the risks of self-treatment of asthma outweigh the public health benefits that OTC epinephrine MDIs may provide. This issue could affect any decision we make on the essential-use status of OTC epinephrine MDIs. Accordingly, we will discuss some of the points raised at the NDAC/PADAC meeting and other information we feel may be relevant, and request comment on these issues to the extent that they apply to OTC epinephrine MDIs as an essential use of ODSs.

i. *Misdiagnosis of asthma*. OTC epinephrine MDIs are only indicated for mild intermittent asthma. The approved labeling for OTC epinephrine MDIs states that the drug should only be used after a doctor has diagnosed asthma. This is because asthma can be a difficult disease to diagnose, even for physicians (Ref. 19). COPD, vocal chord dysfunction, heart disease, and many other illnesses can be misdiagnosed as asthma (see Ref. 5, p. 22).

The results of a study presented by Wyeth at the NDAC/PADAC meeting indicated that 92 percent of those surveyed who solely use OTC epinephrine MDI stated that they had been diagnosed with asthma by a doctor (Wyeth slide 23, citing Ref. 20). We do not have data on how recently the diagnoses were made or on the current accuracy of the diagnoses. The study did state that only 47 percent of those who solely use OTC epinephrine MDIs currently had a primary caregiver for management of asthma (Ref. 20, p. 989), which would seem to indicate that at least some of the diagnoses were not particularly recent. The Internet survey presented by Wyeth at the NDAC/PADAC meeting indicates that 8 percent of purchasers of OTC epinephrine MDIs have not been diagnosed with asthma by a physician, and 28 percent of those who solely use OTC epinephrine MDI reported that they visited a doctor's office in the past year for treatment of their asthma (Wyeth slide 33). This would imply that 72 percent of people who solely use OTC epinephrine MDI had not seen a doctor in the past year for diagnosis and treatment of their asthma.

Asthma is a variable disease that can either lessen or worsen in severity over time. A person previously diagnosed with asthma may be asymptomatic for long periods of time. A diagnosis of asthma and, more important, an evaluation of its severity made at some point in the past may no longer be accurate. Currently, follow-up visits are recommended at 1- to 6-month intervals after an initial diagnosis of asthma (EPR–2, Ref. 5, p. 87). A previous diagnosis of asthma does not necessarily mean that an individual's current asthma-like symptoms are caused by asthma, or that the individual's asthma is of the same severity as originally diagnosed. The likelihood of the previous diagnosis accurately reflecting the patient's current status would seemingly have to decrease the older the diagnosis and evaluation is. A study referred to by Wyeth at the NDAC/PADAC meeting said that ''self assessment of asthma severity may not be 'on target,' especially among individuals who self-medicate their illness with nonprescription bronchodilators'' (Ref. 20, p. 992). It should be kept in mind that this was said about a group in which 92 percent had reported having been diagnosed by a physician as having asthma. This study was relatively small and, while potentially informative, it cannot be viewed as conclusive at this time.

There are some additional data available on the potential misdiagnosis of the severity of asthma by purchasers of OTC epinephrine MDIs. Wyeth presented data at the NDAC/PADAC

meeting that 76 percent of OTC epinephrine MDI purchasers bought one or two OTC epinephrine MDIs a year. This indicates that 24 percent of purchasers bought three or more OTC epinephrine MDIs each year. A Wyeth web page (*http://www.primatene.com/faq/answers.asp#puffs*) says that each 15 milliliters (mL) vial should deliver 270 puffs and the 22.5 mL of PRIMATENE MIST vial should deliver 405 puffs. The 15 ml vial is the most popular size of PRIMATENE MIST (meeting transcript, p. 127). The 15 mL size is also the size manufactured for sale as house brands by Armstrong. If we look at three 15 mL MDIs used over a year-long period, we see that they would provide 16 puffs a week, a level of use that would indicate asthma incidents that are so frequent or severe that it no longer should be characterized mild intermittent asthma. We realize that some of the 24 percent of people who solely use OTC epinephrine MDIs and purchase three or more MDIs in a year may not be using all of the contents of the OTC epinephrine MDIs they purchase. They may be replacing lost MDIs or purchasing extra MDIs to keep at work or in a gym bag. It also should be noted that the use of two 22.5 mL vials a year also provides 16 puffs a week, again indicating a level of use that would not be associated with mild intermittent asthma.

There is other evidence that purchasers of OTC bronchodilators were unable to correctly diagnose the severity of their asthma. A study was conducted in Australia of purchasers of albuterol (or salbutamol, as it is known in Australia and most of the rest of the world), a bronchodilator that was available both with and without a prescription in the State of New South Wales (Ref. 21). In that study, 95 percent of the surveyed purchasers who usually or always purchased albuterol without a prescription were undertreated for their asthma according to a relevant standard of care. We have not formed an opinion on the applicability of the study to the questions involved in this rulemaking. We realize that the study involved a different drug (albuterol), in a different country (Australia), and that the study is over 13 years old. However, we also recognize that the study may represent some of the better data currently available on the question of self-diagnosis of asthma by the purchasers of OTC bronchodilators.

The evidence seems to suggest that many OTC epinephrine MDI purchasers are buying the drug based either on self-diagnosis or on an out-of-date physician's diagnosis.

The issue of the accuracy of the diagnosis of asthma upon which a purchase of an OTC epinephrine MDI is made is very important in reaching a determination on the public health benefits of having the drug available OTC. While some evidence suggests that many purchasers of OTC epinephrine MDIs are doing so based on an inaccurate diagnosis of the severity of their asthma, we have not reached a conclusion on that evidence's weight and significance.

ii. *Undertreatment of asthma.* Undertreatment of asthma can cause more frequent symptoms and attacks, missed work and school, activity limitations, a decline in lung health and function and, possibly, death (Ref. 9).

As mentioned earlier, in the United States, the generally recognized standard of care for asthma is set forth in the EPR–2 (Ref. 5). In the 2002 update to EPR–2 (Ref. 6) we find the latest updates to the standard. Asthma is divided into four classes of severity, which correspond to treatment ''steps.'' More severe classes of asthma are defined by greater frequency of symptoms during the day and night, lower peak expiratory flow (PEF) and forced expiratory volume in 1 second (FEV1) (both are measurements of how well a patient can exhale using the greatest effort), and higher variability in PEF measurements over the course of a day.

As the severity of a patient's asthma increases, treatment becomes more aggressive: For mild persistent asthma, daily use of an inhaled corticosteroid (available only by prescription) is recommended; if the patient has moderate persistent asthma, higher doses of inhaled corticosteroids and/or inhaled corticosteroids with a long-acting beta-agonist are recommended; and for severe persistent asthma, still higher doses of inhaled corticosteroids are recommended in conjunction with a long-acting bronchodilator (available only by prescription).

If a patient's asthma becomes more severe, treatment should become more aggressive, and if the asthma is well controlled, a physician should generally try to reduce the quantity of drugs being taken in order to provide good control with the minimum quantity of drugs. This approach is characterized as a ''stepwise approach for managing asthma'' (EPR 2002 Update, Ref. 6, Appendix A–1).

No daily medication is recommended for mild intermittent asthma, but the EPR–2 recommends the use of a short-acting inhaled $beta_2$-agonist bronchodilator, as needed to treat the occasional bronchospasm. Albuterol is a short-acting inhaled $beta_2$-agonist bronchodilator and albuterol MDIs are the most widely prescribed ''rescue inhalers'' in the United States. The EPR–2 does not recommend nonselective short-acting beta-agonist bronchodilators as rescue inhalers, but rather they recommend use of an inhaled short-acting $beta_2$ selective agonist. Beta-receptors are adrenergic sites in the autonomic nervous system in which physiological responses occur when agents, in this case beta-agonists, are bound to the receptor. Activation of beta-receptors causes various reactions, including relaxation of the bronchial muscles and an increase in the rate and force of cardiac contraction. The beta-receptors are subdivided into $beta_1$, located primarily in the heart and intestinal smooth muscle, and $beta_2$, more localized to bronchial, vascular, and uterine smooth muscles. Epinephrine is a non-selective beta-agonist which affects both the $beta_1$ and $beta_2$-receptors so that it affects both heart and bronchial smooth muscles (as well as the intestinal, vascular, and uterine smooth muscles). $Beta_2$ selective agonists, such as albuterol, have less of an effect on the heart than $beta_1$ and non-selective beta-agonists have. Epinephrine's lack of selectivity has caused concerns about its effect on the heart, but the limited data we have before us do not indicate that use of OTC epinephrine MDIs is associated with a greater risk of significant adverse cardiovascular events.

The question of undertreatment of asthma for purchasers of OTC epinephrine MDIs is not confined to people with asthma who solely or primarily use OTC epinephrine MDIs. The level of usage of short-acting $beta_2$-agonists is a factor that should be monitored by physicians treating asthma patients (EPR–2, Ref. 6, p. 35). Increased usage may often indicate the need for treatment being stepped up, while decreased usage may indicate that treatment could be stepped down. The availability of OTC epinephrine MDIs allows patients to purchase a short-acting beta-agonist without a prescription. It seems possible that this may deny important information to the health care provider as to the accurate assessment of a patient's use of rescue inhalers. We are unaware of any data that directly address this issue.

iii. *Patient education.* Patient education is generally regarded as a key component to successful asthma treatment. The EPR–2 says, ''[E]ducation for an active partnership with patients remains the cornerstone of asthma management and should be carried out by health care providers delivering

asthma care. Education should start at the time of asthma diagnosis and be integrated into every step of clinical asthma care'' (Ref. 5, p. 5).

Elements of patient education can include providing information about how asthma affects the lungs, the difference between short-acting rescue medications and control medications, the importance of using control medication as prescribed, important environmental control measures that may need to be considered, such as removing asthma triggers from the patient's home, the tracking of severity of the patient's asthma, and proper use of an MDI.

The proper use of an MDI is an important factor in proper treatment of asthma. This issue was mentioned but not discussed at the NDAC/PADAC meeting (meeting transcript, p. 139). Improper use of an MDI can result in a reduction of the dose delivery by 50 percent or more (Ref. 22). A study in children and adolescents showed less than 25 percent used their MDIs correctly (Ref. 23), and a study in adults showed similar results (Ref. 24). Further, the last study showed that inadequate English language literacy is associated with poor use of MDIs.

The importance of patient education may be a significant issue in any discussion of the risks and benefits of self-treatment of asthma.

iv. *Effects of undertreatment.* While the cost of treatment for poor and medically underserved populations was frequently mentioned at the NDAC/PADAC meeting, much less was said about the effects and costs of undertreatment. A recent study of urban pediatric patients, who were predominantly from poor and minority households, showed that an increased use of corticosteroids in pediatric patients (in accordance with the guidelines in EPR–2) resulted in fewer hospitalizations, emergency department visits, and outpatient visits (Ref. 25).

The importance of prompt appropriate treatment of asthma is reinforced by studies suggesting that delaying treatment with inhaled corticosteroids decreases the effectiveness of the inhaled corticosteroids once treatment begins (Refs. 26 and 27).

Studies also indicate that regular use of beta-agonist bronchodilators may reduce the person with asthma's response to subsequent beta-agonist administration (Ref. 28). This tolerance could mean that patients who regularly use OTC epinephrine MDIs may be placed in a position where their occasional use of a $beta_2$-agonist, as part of a course of treatment using inhaled corticosteroids as a control medication, may not be as effective for these patients as might otherwise be possible. The effects of undertreatment of asthma may be a key issue in any discussion of the risks and benefits of self-treatment of asthma.

One public speaker did say that ''a delay in the early introduction of prescription anti-inflammatory asthma therapy could lead to the development of irreversible lung damage'' (meeting transcript, p. 171). We do not find his statement to be persuasive. The use of inhaled steroids was not shown to prevent damage to the lungs in several studies (Refs. 29, 30, and 31), and the evidence supporting the speaker's statement about ''irreversible lung damage'' is limited and not conclusive (Ref. 32). Any disagreement on the issue of permanent lung damage should not be allowed to obscure the fact that proper use of inhaled steroids significantly reduces asthma morbidity.

3. Conclusions on the Public Health Benefits of OTC Epinephrine MDIs

We believe that epinephrine does not have any clinical advantages over albuterol HFA MDIs and that patient convenience for patients that have not kept their asthma drugs prescriptions current or do not have the prescribed drug product with them is not an important public health benefit. We have not reached a conclusion on the risks and benefits of continuing to have epinephrine available OTC for people with asthma who face barriers to obtaining appropriate health care, and therefore we cannot reach a conclusion on whether the use of OTC epinephrine MDIs provides an important health benefit. We specifically request comments on the expected costs and public health effects to individuals with asthma if OTC epinephrine MDIs were removed from the market without a similar product being available OTC. While our tentative conclusion that epinephrine is no longer an essential use is based primarily on the conclusion we have drawn regarding technical barriers to producing the epinephrine in a non-ODS formulation, we will evaluate the public-health effects of removal of OTC epinephrine from the market, and any final conclusions we reach on the essential-use designation of epinephrine may be significantly influenced by data received in comments on the public-health issues raised by this proposal.

C. Does Use of OTC Epinephrine MDIs Release Cumulatively Significant Amounts of ODSs Into the Atmosphere or is the Release Warranted in View Of The Otherwise Unavailable Important Public Health Benefit?

The use of CFCs in MDIs for the treatment of asthma and COPD is the only legal use in the United States of newly manufactured CFCs. The quantity of CFCs used in OTC epinephrine MDIs is a significant portion of the total quantity of newly manufactured CFCs used, and therefore eventually released, in the United States. The size of the portion will increase as other MDIs containing CFCs are removed from the market. As we discussed in part II of this document, the release of CFCs from MDIs is cumulatively significant. Because we have not reached a conclusion on the public health benefits of OTC epinephrine MDIs, we cannot reach a conclusion on whether the release of CFC ODSs is warranted in view of the public health benefits.

D. Conclusions

We have tentatively concluded the following:

- The pharmaceutical industry has had success in formulating similar moieties without ODSs. In particular, HFA MDIs containing albuterol, a close chemical analog of epinephrine, have been approved by FDA. We have no evidence to suggest that formulating epinephrine in a product that does not release ODSs poses unique technical challenges. Therefore, we tentatively conclude that no substantial technical barriers exist to formulating an epinephrine inhaler without ODSs.
- The release of ODSs into the atmosphere from OTC epinephrine MDIs is cumulatively significant.

We have not reached a conclusion on whether the use of OTC epinephrine MDIs provides an unavailable important public health benefit or whether the release of ODSs from OTC epinephrine MDIs is warranted in view of the otherwise unavailable public health benefit. However, as we discussed in part II of this document, if a use fails to meet any one of the three criteria in § 2.125(f), FDA may elect to go through rulemaking to remove its essential-use designation.

We have therefore tentatively concluded that oral pressurized MDIs containing epinephrine are no longer an essential use of ODSs and should be removed from the list of essential uses in § 2.125(e). As noted throughout the preamble, we are keenly interested in receiving public comments and any available data concerning technical

barriers to developing an epinephrine inhaler without ODSs, the status of any ongoing efforts to develop such a product, and the public health effects and costs of removing epinephrine MDIs from the market prior to a similar product being available OTC. Any final conclusions that we reach on the essential-use designation of epinephrine may be significantly influenced by such comments.

VI. Environmental Impact

We have carefully considered the potential environmental effects of this action. We have tentatively concluded that the action will not have a significant adverse impact on the human environment, and that an environmental impact statement is not required. Our initial finding of no significant impact and the evidence supporting that finding, contained in a draft environmental assessment, may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday. We invite comments on the draft environmental assessment. Comments on the draft environmental assessment may be submitted in the same way as comments on this document (see **DATES**).

VII. Analysis of Impacts

A. Introduction

FDA has examined the impacts of the proposed rule under Executive Order 12866 the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law No. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency does not believe that the proposed rule would have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $122 million, using the most current (2005) Implicit Price Deflator for the Gross Domestic Product. This proposed rule may result in a 1-year expenditure that would meet or exceed this amount.

The Congressional Review Act requires that regulations that have been identified as being major must be submitted to Congress before taking effect. This rule is major under the Congressional Review Act.

This proposed rule would prohibit sales of OTC epinephrine CFC MDIs in interstate commerce after December 31, 2010, forcing users to either self-medicate with less effective therapies (see section VII.D.3.a), or to visit a physician and get a prescription for an alternative drug product such as albuterol. Because OTC epinephrine CFC MDIs are widely regarded by physicians and people with asthma as the most effective relief medication for asthma available OTC, if users of these MDIs choose to self-medicate, they will be more likely to require hospitalization or an emergency department visit. Alternatively, if they choose to see a physician to obtain a prescription for albuterol, the OTC epinephrine CFC MDI users, or their insurers, will have to pay more, not only for visits to the physician, but also for more expensive drugs. More physician visits, however, may lead current OTC epinephrine MDI users to increase their use of prescription control medication, such as inhaled corticosteroids, which should decrease their likelihood of both asthma attacks and hospital visits. We have no data suggesting whether current OTC epinephrine MDI users are more likely to self-medicate or to visit a physician and get an albuterol MDI prescription once OTC epinephrine MDIs are no longer available. We therefore focus on scenarios where, if OTC epinephrine MDIs are no longer available, all current OTC epinephrine MDI users either self-medicate with other products such as herbal supplements, caffeine, and OTC ephedrine or visit a physician to obtain, and fill, prescriptions for albuterol MDIs. These extreme scenarios offer plausible bounds for estimating the costs and benefits resulting from this proposed rule and regulatory alternatives.

CFCs available for production of OTC epinephrine MDIs may be exhausted prior to the effective date of this proposed rule if the United States was unable to obtain an essential-use allocation for CFCs under the Montreal Protocol for use in OTC epinephrine MDIs for 2010 (see Ref. 33, p. 59). If so, this proposed rule may not have any significant impacts. To the extent that CFCs for production of OTC epinephrine MDIs remain available, we estimate this proposed rule will have the impacts summarized in the following table.

TABLE 2.—SUMMARY OF ANNUAL QUANTIFIABLE EFFECTS OF THE PROPOSED RULE, ASSUMING CFCS FOR PRODUCTION OF OTC EPINEPHRINE MDIS REMAIN AVAILABLE

	Increased Health care Expenditure, in 2006 Dollars	Increased Emergency Department Visits for Asthma	Increased Hospitalizationsfor Asthma	Reduced CFC Emissions from Phase-Out (tonnes)
If current OTC epinephrine MDI users self-medicate	$360 million to $1.0 billion	0 to 440,000	40,000 to 120,000	70
If current OTC epinephrine MDI users visit their physician for prescription albuterol (excluding controller medication)	$170 million to $340 million			70

We are unable to estimate quantitatively the reductions in skin cancers, cataracts, and environmental harm that may result from the reduction in CFC emissions by roughly 70 tonnes during these years. Although we cannot

estimate quantitatively the public health effects of the phase-out, based on a qualitative assessment, the agency concludes that the benefits of this regulation justify its costs.

We state the need for the regulation and its objective in section VII.B of this document. Section VII.C of this document provides background on CFC depletion of stratospheric ozone, the Montreal Protocol, the OTC epinephrine MDI market, and the health conditions that epinephrine is used to treat. We analyze the benefits and costs of the rule, including effects on government outlays, in section VII.D of this document. We assess alternative dates in section VII.E of this document, and discuss sensitivity analysis in section VII.F of this document. We present an analysis of the effects on small business in a regulatory flexibility analysis in section VIII of this document. We discuss our conclusions in section VII.H of this document.

B. Need for Regulation and the Objective of This Rule

This proposed regulation responds to U.S. obligations under the Montreal Protocol, as well as the requirements of the Clean Air Act. The Montreal Protocol itself recognizes that the regulation of ODSs is necessary because private markets are very unlikely to preserve levels of stratospheric ozone sufficient to protect the public health. In private markets, individual users of CFC MDIs have no significant private incentive to switch to non-ozone-depleting products because under current regulations the environmental and health costs of ozone-depleting products are external to users. Moreover, should MDI users voluntarily internalize these costs by switching to alternative products, they would not receive the benefits of their actions. Each user would bear all of the costs and virtually none of the benefits of such a switch, as the environmental and health benefits would tend to be distributed globally and occur decades in the future. Thus, the outcome of an unregulated private market would be the continued use of CFC MDIs, even if the social value of reducing emissions were clearly much greater than the price premium for non-ozone-depleting therapies.

One of the objectives of this proposed rule is to respond to the obligations under the Montreal Protocol requiring the United States to reduce atmospheric emissions of ODSs, specifically CFCs. CFCs and other ODSs deplete the stratospheric ozone that protects the Earth from ultraviolet solar radiation. We are proposing to end the essential-use designation for ODSs used in MDIs containing epinephrine because we have tentatively concluded that no substantial technical barriers exist to formulating epinephrine in a product that does not release ODSs (see section V.A of this document). Removing this essential-use designation will reduce emissions that deplete stratospheric ozone.

C. Background

1. CFCs and Stratospheric Ozone

During the 1970s, scientists became aware of a relationship between the level of stratospheric ozone and industrial use of CFCs. Ozone (O_3), which causes respiratory problems when it occurs in elevated concentrations near the ground, shields the Earth from potentially harmful solar radiation when it is in the stratosphere. Excessive exposure to solar radiation is associated with adverse health effects, such as skin cancer and cataracts, as well as adverse environmental effects. Emissions of CFCs and other ODSs reduce stratospheric ozone concentrations through a catalytic reaction, thereby allowing more solar radiation to reach the Earth's surface. Because of this effect and its consequences, environmental scientists from the United States and other countries advocate ending all uses of these chemicals.

2. The Montreal Protocol

The international effort to craft a coordinated response to the global environmental problem of stratospheric ozone depletion culminated in the Montreal Protocol, an international agreement to regulate and reduce production of ODSs. The Montreal Protocol is described in section I.B.2 of this document. One hundred and ninety-one countries have now ratified the Montreal Protocol, and the overall usage of CFCs has been dramatically reduced. In 1986, global consumption of CFCs totaled about 1.1 million tonnes, and by 2004, total annual production had been reduced to 70,000 tonnes (Ref. 34). This decline amounts to more than a 90-percent decrease in production and is a key measure of the success of the Montreal Protocol. Within the United States, use of ODSs, and CFCs in particular, has fallen sharply—production and importation of CFCs is less than 1 percent of 1989 production and importation (Ref. 34).

A relevant aspect of the Montreal Protocol is that production of CFCs in any year by any country is generally banned after the phase-out date unless the Parties to the Montreal Protocol agree to designate the use for which the CFCs are produced as ''essential'' and approve a quantity for that use.

Each year, each Party nominates the amount of CFCs needed for each essential use and provides the reason such use is essential. Agreement on both the essentiality and the amount of CFCs needed for each nominated use has been reached by consensus at the annual Meeting of the Parties.

3. Benefits of the Montreal Protocol

EPA has generated a series of estimates of the environmental and public health benefits of the Montreal Protocol (Ref. 35). The benefits include reductions of hundreds of millions of nonfatal skin cancers, 6 million fewer fatalities due to skin cancer, and 27.5 million cataracts avoided between 1990 and 2165 if the Montreal Protocol were fully implemented. EPA estimates the value of these and related benefits to equal $4.3 trillion in present value when discounted at 2 percent over the period of 175 years. This amount is equivalent to about $6 trillion after adjusting for inflation between 1990 and 2004. This estimate includes all benefits of total global ODS emission reductions expected from the Montreal Protocol and is based on reductions from a baseline scenario in which ODS emissions would continue to grow for decades but for the Montreal Protocol.

4. Characteristics of Asthma

OTC epinephrine MDIs are used to treat asthma, a chronic respiratory disease characterized by episodes or attacks of bronchospasm on top of chronic airway inflammation. These attacks can vary from mild to life-threatening and involve shortness of breath, wheezing, cough, or a combination of symptoms. Many factors, including allergens, exercise, and viral infections may trigger an asthma attack.

Early release data from the first 6 months of the 2006 NHIS indicate that 8.0 percent of people in the United States have asthma (Ref. 36, fig. 15.5). The prevalence of asthma decreases with age, with the prevalence being 9.5 percent for children ages 0 to 14, compared to 7.8 percent for persons ages 15 to 34, and 7.4 percent for adults ages 35 and over (Ref. 36, fig. 15.5).

The early release data from the first 6 months of the 2006 NHIS also indicate 4.2 percent of Americans had an asthma episode in the previous 12 months, with 5.5 percent of children under age 14, 3.6 percent of persons ages 15 to 34, and 4.0 percent of adults over age 35 reporting episodes (Ref. 36, fig. 15.2).

According to data from the National Ambulatory Medical Care Survey, in 2004 there were about 15 million outpatient asthma visits to physician offices and hospital clinics and 1.8 million emergency department visits (Ref. 37, table 19). According to data from the National Center for Health Statistics: National Hospital Discharge Survey, there were 497,000 hospital admissions for asthma in 2004 (Ref. 37, table 12) and 4,099 mortalities in 2003 (Ref. 37, table 1). The estimated direct medical cost of asthma (hospital services, physician care, and medications) was $11.5 billion in 2004 (Ref. 37, table 20).

We estimate that OTC epinephrine MDI users make roughly 280,000 to 370,000 visits to emergency departments and require roughly 75,000 to 100,000 hospitalizations annually. We know of no data or study suggesting OTC epinephrine MDI users differ from other people with asthma in their risk of requiring emergency department visits or hospitalizations. In a published study of 601 people with asthma (Ref. 38), the authors did not find any evidence that epinephrine users are more likely to visit emergency departments or to require hospitalization than people with asthma who do not use epinephrine. On the other hand, we know of no data suggesting that OTC epinephrine MDI users are less likely to visit emergency departments or require hospitalization. As described in section V.B.2.b of this document, we estimate that 1.7 to 2.3 million people with asthma use OTC epinephrine MDIs. Assuming 1.7 to 2.3 million people with asthma are OTC epinephrine MDI users, and that they require emergency department visits and hospitalization in proportion to their share of the population, OTC epinephrine MDI users account for roughly 280,000 to 370,000 emergency department visits annually [15 percent of 1.8 million = 280,000; 20 percent of 1.8 million = 370,000] and 75,000 to 100,000 hospitalizations annually [15 percent of 497,000 = 75,000; 20 percent of 497,000 = 100,000].[25]

While the prevalence of asthma (the percent of the population diagnosed with asthma) has been increasing in recent years, CDC reports that the incidence of asthma (the rate of new diagnoses) has remained fairly constant since 1997 (Ref. 39). Non-Hispanic Blacks, children under 17 years old, and females have higher incidence rates than the general population and also are more likely to have had an attack of asthma in the previous 12 months. The CDC notes that although increases have occurred in the numbers and rates of physician office visits, hospital outpatient visits, and emergency department visits, these increases are accounted for by the increase in prevalence. The CDC also notes that asthma mortality and asthma hospitalization rates were declining and stated that these downward trends might indicate early successes by asthma intervention programs.

5. Current U.S. Market for OTC Epinephrine MDIs

We estimate that 1.7 million to 2.3 million consumers purchase roughly 4.5 million OTC epinephrine MDIs in the United States each year, at an average price of $13.29 per MDI.

Based on data from ACNielsen for the 52 weeks ending September 9, 2006 (Ref. 40), we estimate 3.5 million OTC epinephrine MDIs are sold in the United States annually, excluding sales through Wal-Mart Stores, Inc. (Wal-Mart).[26] Wyeth estimates roughly 25 percent of OTC medications such as PRIMATENE MIST, a branded OTC epinephrine MDI product, are sold through Wal-Mart annually (Wyeth slide 32), implying a total market of roughly 4.5 million OTC epinephrine MDIs sold annually. This is equivalent to 1.3 billion inhalations per year, or 146 million days of therapy (at 9 inhalations per day, the highest recommended long-term dose).

Based on ACNielsen data (Ref. 40) for the 52 weeks ending September 9, 2006, adjusted for sales through Wal-Mart, we estimate OTC epinephrine MDI sales amount to roughly $60 million in the United States annually and the average U.S. retail price of OTC epinephrine MDIs is $13.29, equivalent to roughly $0.41 per day of therapy.

According to American Lung Association reports derived from the National Center for Health Statistics' 2004 NHIS (Ref. 37, table 10), 11.6 million individuals reported having had an asthma attack in the last 12 months. According to Wyeth Pharmaceuticals (Wyeth slide 32), 15 to 20 percent of adults with asthma that have had an asthma attack in the previous 12 months use OTC epinephrine MDIs. As we discussed in section V.B.2.b of this document, we estimate that 1.7 to 2.3 million people with asthma use OTC epinephrine MDIs. Each of these users, on average, purchases roughly 1.9 to 2.6 OTC epinephrine MDIs each year [4.5 million MDIs ÷ 1.7 million users = 2.6 MDIs per user per year; 4.5 million MDIs ÷ 2.3 million users = 1.9 MDIs per user per year].

We estimate 600,000 to 1.3 million OTC epinephrine MDI users do not regularly use prescription asthma products. According to Wyeth Pharmaceuticals, somewhere between 43 percent (Wyeth slide 33) and two-thirds (Wyeth slide 32) of OTC epinephrine MDI users also use prescription drugs for treatment of their asthma. This implies that 600,000 to 1.3 million OTC epinephrine MDI users do not use prescription asthma medicine [1,752,653 x .33 = 578,375; 2,336,871 x .57 = 1,332,016].

D. Benefits and Costs of the Proposed Rule

We estimate the benefits and costs of government action relative to a baseline scenario that, in this case, is a description of the production, use, and access to OTC epinephrine MDIs in the absence of a final rule based on this proposed rule. In this section we first describe such a baseline, and then present our analysis of the benefits of the rulemaking. We also present an analysis of the most plausible regulatory alternatives, given the Montreal Protocol. Next, we turn to the costs of the rulemaking and to an analysis of the effects on the Medicare and Medicaid programs.

1. Baseline Conditions

We developed baseline estimates of future conditions to assess the economic effects of prohibiting marketing of OTC epinephrine MDIs after December 31, 2010. It is standard practice to use, as a baseline, the state of the world without the rulemaking in question, or where the rulemaking implements a legislative requirement, the world without the statute. For this proposed rule, we make the baseline assumption that it is questionable if the United States would be able to obtain an essential-use allocation for CFCs for the manufacture of OTC epinephrine MDIs under the Montreal Protocol for 2010.[27] To the extent that new CFCs for production of OTC epinephrine MDIs remain available past that date, we estimate this rulemaking will have quantifiable impacts as summarized in table 2. If CFCs for the production of OTC epinephrine MDIs are no longer

[25]The 15 to 20 percent figures were derived, in part, from comparing the number of purchasers of OTC epinephrine MDIs to the number of adults suffering an asthma incident in the previous 12 months.

[26]Retail sales data from drug stores and supermarkets provided by ACNielsen do not include retail sales data from Wal-Mart because Wal-Mart does not participate in ACNielsen surveys.

[27]Even if there is no essential-use allocation under the Montreal Protocol for the year 2010, production of epinephrine CFC MDIs would likely continue well into the year with manufacturers using preexisting stocks of CFCs.

available by the end of 2010, this rule will have no impact.

2. Benefits of the Proposed Rule

The benefits of a final rule based on this proposed rule include environmental and public health improvements from protecting stratospheric ozone by reducing CFC emissions by roughly 70 tonnes annually. Benefits also include expectations of increased returns on investments in environmentally friendly technology, reduced risk of unexpected disruption of supply of OTC epinephrine MDIs, and continued international cooperation to comply with the spirit of the Montreal Protocol, thereby potentially reducing future emissions of ODSs throughout the world.

Failure to finalize this proposed rule may lead the Parties to the Montreal Protocol to consider restrictions on access to the CFCs required to manufacture these OTC epinephrine MDIs products, which could create the risk of removal of these products from the market.

a. *Reduced CFC emissions*. Withdrawal of OTC epinephrine MDIs from the market will reduce CFC emissions by approximately 70 tonnes per year. Current CFC inventories are substantial. Nominations for new CFC production are generally approved by the Parties to the Montreal Protocol 2 years in advance. The proposed rule would ban marketing of OTC epinephrine CFC MDIs after December 31, 2010. There is some uncertainty with respect to the amount of inventory that will be available in the future, but the United States' ability to obtain an essential-use allocation for CFCs for the manufacture of OTC epinephrine MDIs in 2010 is questionable.

In an evaluation of its program to administer the Clean Air Act, EPA has estimated that the benefits of controlling ODSs under the Montreal Protocol are the equivalent of $6 trillion in 2004 dollars. However, EPA's report provides no information on the total quantities of reduced emissions or the incremental value per tonne of reduced emissions. EPA derived its benefits estimates from a baseline that included continued increases in emissions in the absence of the Montreal Protocol. We have searched for authoritative scientific research that quantifies the marginal economic benefit of incremental emission reductions under the Montreal Protocol, but have found none conducted during the last 10 years. As a result, we are unable to quantify the environmental and human health benefits of reduced emissions from this regulation. Such benefits, in any event, were included in EPA's earlier estimate of benefits.

The reduction of CFC emissions associated with removing OTC epinephrine CFC MDIs from the U.S. market represents only a fraction of 1 percent of total global CFC emissions. Current allocations of CFCs for OTC epinephrine MDIs account for less than 0.1 percent of the total 1986 global production of CFCs (Ref. 41). Furthermore, current U.S. CFC emissions from MDIs represent a much smaller, but unknown share of the total emissions reduction associated with EPA's estimate of $6 trillion in benefits, because that estimate reflects future emissions growth that has not occurred.

If a final rule removing the essential-use designation of OTC epinephrine MDIs takes effect before CFCs cease to be available, the proposed rule may account for some small part of the benefits estimated by EPA. However, we are unable to assess or quantify specific reductions in future skin cancers and cataracts associated with the reduced emissions that might be associated with this proposed rule or the regulatory alternatives.

b. *Returns on investment in environmentally-friendly technology*. Establishing a phase-out date prior to the expiration of patents on HFA MDI technology and other aerosolized drug technology that does not use ODSs rewards the developers of the ozone-safe technologies. In particular, such a phase-out date would validate expectations that the government will protect incentives to research and develop ozone-safe technologies.

Newly developed technologies to avoid ODS emissions have resulted in more environmentally ''friendly'' air conditioners, refrigerants, solvents, and propellants, but only after significant investments. Several manufacturers have claimed development costs that total between $250 million and $400 million to develop HFA MDIs and new propellant-free devices for the global market (Ref. 42).

These investments have resulted in several innovative products in addition to HFA MDIs. For example, breath-activated delivery systems, dose counters, DPIs, and mini-nebulizers have also been successfully marketed.

c. *International cooperation*. The advantages of selecting a date that maintains international cooperation are substantial because the Montreal Protocol, like most international environmental treaties, relies primarily on a system of national self-enforcement, although it also includes a mechanism to address noncompliance. In addition, compliance with the Montreal Protocol's directives is subject to differences in national implementation procedures. Economically less-developed nations, which have slower phase-out schedules than developed nations, have emphasized that progress in eliminating ODSs in developing nations is affected by observed progress of developed nations, such as the United States. If we had adopted a later phase-out date, other Parties could attempt to delay their own control measures.

3. Costs of the Proposed Rule and Alternatives

The costs of removing OTC epinephrine MDIs from the market include the costs of increased physician visits, increased use of more expensive reliever MDIs, and potential increases in the use of controller medications, visits to emergency departments, and hospitalizations. Because we cannot predict whether OTC epinephrine MDI users will self-medicate or go to a physician for a prescription reliever once OTC epinephrine MDIs are removed from the market, we quantify the costs for two extreme cases. In the first case, OTC epinephrine MDI users not already seeing a physician self-medicate, while those who already see a physician switch from OTC epinephrine MDIs to albuterol HFA MDIs. In the second case, all OTC epinephrine MDI users visit their physician and switch to albuterol HFA MDIs. We propose these two cases as reasonable bounds for the expected cost of removing OTC epinephrine MDIs from the market.

a. *Self-medication*. If all OTC epinephrine MDI users who do not already see a physician for asthma were to self-medicate once OTC epinephrine MDIs were no longer available, and those who do see a physician were to increase their albuterol use, we estimate this rulemaking would result in $360 million to $1.0 billion in increased spending annually. This spending includes $280 million to $1.0 billion resulting from increased hospitalizations and emergency department visits, and roughly $30 million to $80 million in increased spending on more expensive medicines. Under the assumption of self-medication, we estimate that removing OTC epinephrine MDIs from the market would result in 40,000 to 120,000 more hospitalizations for asthma annually, and up to 440,000 more asthma-related emergency department visits each year. These estimates, based on calculations throughout this section, do not capture the decreased quality of life of OTC

epinephrine MDI users, lost productivity, or the cost of alternative therapies, such as herbal remedies, caffeine and OTC ephedrine.

The authors of a published study found that people with asthma who self-medicate with herbal products and caffeine, the most common forms of self medication, are at increased risk of requiring an emergency department visit or hospitalization (Ref. 38). They found that those using herbal treatments are 2.5 times as likely to require hospitalization, and that those who use caffeine to treat asthma are 3.1 times as likely as other people with asthma to require both an emergency department visit and hospitalization.

We estimate that OTC epinephrine MDI users who do not use prescription medicine for their asthma make roughly 100,000 to 200,000 emergency department visits and require roughly 25,000 to 50,000 hospitalizations. We estimate OTC epinephrine MDI users make roughly 280,000 to 370,000 emergency department visits and require about 75,000 to 100,000 hospitalizations annually, as described in section VII.C.4 of this document. We estimate somewhere between 43 percent and two-thirds of OTC epinephrine MDI users do not use prescription medicine for their asthma, as discussed in section 6. Assuming that OTC epinephrine MDI users who do not use prescription medicine for asthma do not differ in their rates of hospitalization and emergency department visits from those who do use prescription medicine for asthma, we estimate that OTC epinephrine MDI users who do not use prescription medicine for asthma make 100,000 to 200,000 emergency department visits and require 25,000 to 55,000 hospitalizations annually [275,700 emergency department visits x 1/3 = 91,900 emergency department visits; 367,600 emergency department visits x (1 - .43) = 209,532 emergency department visits; 74,550 hospitalizations x 1/3 = 24,850 hospitalizations; 99,400 hospitalizations x (1 - .43) = 56,658 hospitalizations].

If current OTC epinephrine MDI users who do not use prescription medicine for asthma were to self-medicate with herbal treatments, and those self-medicating with herbal treatments face 2.5 times the risk of a hospitalization, this would imply a lower bound increase of roughly 40,000 hospitalizations [24,850 hospitalizations x (2.5 - 1) = 37,275]. As an upper bound, if all OTC epinephrine MDI users were to self-medicate with caffeine, emergency department visits would increase by roughly 440,000 [209,532 emergency department visits x (3.1 - 1) = 440,017] and hospitalizations would increase by roughly 120,000 [56,658 hospitalizations x (3.1 - 1) = 118,983]. We do not have data that will allow us to estimate increases in hospitalizations and emergency department visits for patients using other forms of self-medication, such as OTC ephedrine. We request comments that would provide information allowing us to address this issue.

We estimate the 2006 cost of an emergency department visit for asthma at roughly $300 and the cost of hospitalization for asthma at roughly $7500. Based on data from the 2004 National Hospital Discharge Survey, the American Lung Association estimates the 497,000 hospitalizations for asthma cost roughly $3.6 billion in inpatient care and physician services, equivalent to roughly $7,300 per hospitalization (Ref. 37). The 1.8 million emergency department visits for asthma cost about $518 million, equivalent to roughly $280 per visit. Adjusting these figures for inflation according to the CPI for medical care, we estimate that the average hospitalization for asthma would cost roughly $7,500 and the average emergency department visit for asthma would cost roughly $300 in 2006.

Based on these estimates, if current OTC epinephrine MDI users who do not currently use prescription medicine were to self-medicate, the result would be costs of roughly $280 million [37,275 hospitalizations x $7,565.84 = $282,016,770] to $1.0 billion annually [(118,982 hospitalizations x $7,565.84) + (440,017 emergency department visits x $294.17) = $1,029,639,003].

Assuming current OTC epinephrine MDI users who do use prescription medicine for asthma increase their use of albuterol HFA MDIs without requiring more frequent physician visits, we estimate that they will pay roughly $30 million to $80 million more for medicine each year. As discussed in section 6, somewhere between 43 percent and two-thirds of OTC epinephrine MDI users also use prescription medicine for their asthma. Assuming current OTC epinephrine MDI users who also use prescription medicines for their asthma use roughly the same number of OTC epinephrine MDIs per year as those who do not, we estimate dual users use roughly 2 million to 3 million OTC epinephrine MDIs annually [4,486,104 MDIs x 0.43 = 1,929,025; 4,486,104 MDIs x 2/3 = 2,990,736 MDIs]. As discussed in the following section, we estimate an albuterol HFA MDI will cost between $16 and $25 more than an OTC epinephrine MDI, and that one albuterol MDI is roughly equivalent to one OTC epinephrine MDI. The lower priced albuterol MDIs are currently being withdrawn from the market, and will not be available at the time of the proposed effective date of this rule (see 70 FR 71685). The higher price for albuterol HFA MDIs implies that if OTC epinephrine MDI users who also use prescription medicine for their asthma were to increase their use of albuterol HFA MDIs when OTC epinephrine MDIs are no longer available, they and their insurers would spend roughly $30 million to $80 million more per year for medicine [1,929,025 MDIs x $16.08 per MDI = $31,022,023; 2,990,736 MDIs x $25.15 per MDI = $76,418,426].

In total, self-medication by OTC epinephrine-only MDI users and increased albuterol use by those already using prescription medicine would result in increased spending of $360 million to $1.0 billion annually [$282,016,770 + $76,418,426 = $358,435,196; $1,029,639,003 + $31,022,023 = $1,060,661,026].

b. *Increased physician visits and albuterol use*. If, as a result of the removal of OTC epinephrine MDIs from the market, all current OTC epinephrine MDI users were to seek out prescription albuterol HFA MDIs through increasing the frequency of physician visits, we estimate that this scenario would result in roughly $170 million to $340 million in increased health care spending, including $100 million to $225 million in economic costs through an increase in visits to physicians and $72 million to $114 million in increased spending on prescription albuterol.

We estimate that if current epinephrine users who do not use prescription medicine for their asthma make one additional physician visit per year to enable them to switch from OTC epinephrine MDIs to albuterol MDIs, the result would be roughly 600,000 to 1.3 million additional physician visits annually. This estimate stems directly from the estimate presented in section 6 that there are roughly 600,000 to 1.3 million epinephrine users who do not use prescription medicine for their asthma. These estimates assume that OTC epinephrine MDI users who do use prescription medicine for their asthma, and therefore already make regular physician visits, are able to increase their albuterol use without increasing the frequency of those visits.

We estimate the 2006 cost of a physician visit for asthma to be roughly $170. Based on 2004 data from the National Ambulatory Medical Care Survey, the American Lung Association estimates that 1.5 million physician visits and non-emergency outpatient

hospital visits for asthma cost roughly $2.4 billion, equivalent to roughly $160 per physician visit. Adjusting these figures for inflation according to the CPI for medical care, we estimate that a physician visit for asthma would cost roughly $170 per visit in 2006. An increase of 600,000 to 1.3 million physician visits each year would therefore cost roughly $100 million to $225 million annually [584,217.75 visits x $168.966 per visit = $98,712,936; 1,332,016.47 visits x $168.966 per visit = $225,065,495]. These estimates do not take into account the value of the time patients spend visiting their physicians.

If all current OTC epinephrine MDI users were to switch to prescription albuterol HFA MDIs, we estimate the result to be roughly $70 million to $115 million in increased spending on medicine. We estimate that it will take roughly one albuterol HFA MDI to replace each OTC epinephrine MDI removed from the market. OTC epinephrine MDIs contain roughly 270, 405, or 540 inhalations, depending on the size of the MDI. Based on ACNielsen data for the 52 weeks ending September 9, 2006 (Ref. 40), we estimate that the average OTC epinephrine MDI contained 293 inhalations, equivalent to 32.6 days of therapy, assuming OTC epinephrine MDI users use, but do not exceed, the long term maximum recommended dose of 9 inhalations per day. The usual dosage of albuterol HFA MDIs is 8 to 12 inhalations per day, and albuterol HFA MDIs contain 200 inhalations, implying that each MDI contains 17 to 25 days of therapy per MDI. Allowing for the greater therapeutic effectiveness of albuterol compared to epinephrine, we estimate it will take roughly one albuterol HFA MDI to replace each OTC epinephrine MDI removed from the market.

Based on ACNielsen data from the 52 weeks ending September 9, 2006 (Ref. 40), we estimate the average retail price of an OTC epinephrine MDI to be $13.29. Based on average retail sales prices across all payer types for the first half of 2004, the average albuterol HFA MDI cost $39.42 (Ref. 43). This estimate does not reflect less expensive albuterol HFA MDIs introduced to the market since that time. Some market analysts also predict that albuterol HFA MDI prices will decline up to 20 percent as the market switches away from albuterol CFC MDIs and large payers use their market power to drive down prices (Ref. 44). Taking these factors into consideration, we estimate the average retail price of an albuterol HFA MDI is $30 or more, a price increase of roughly $16 to $25 per MDI. If current OTC epinephrine MDI users must purchase one albuterol MDI for each OTC epinephrine MDI they currently purchase, total expenditures by current OTC epinephrine MDI users and their insurers would increase roughly $70 million to $115 million [4,486,104 MDIs x $16.08 per MDI = $72,134,239; 4,486,104 MDIs x $25.55per MDI = $114,627,640].

If, instead of self-medicating, OTC epinephrine MDI users go to the physician and increase their use of albuterol HFA MDIs, we estimate increased spending of roughly $170 million to $340 million dollars annually [$98,712,936 for physician visits + $72,134,239 for medicine (albuterol) = $170,857,175; $225,065,495 in physician visits + $114,627,640 in medicines = $339,693,135].

These estimated expenditures would decrease dramatically if generic albuterol HFA MDIs were to be introduced to the market. Patents listed in ''Approved Drug Products with Therapeutic Equivalence Evaluations'' (Orange Book) for albuterol HFA MDIs expire in 2010 and 2017, making those possible dates for generic entry. Of course, unforeseen introduction of alternative therapies could reduce these expected increases in expenditures.

These increased expenditures represent, to some extent, transfers from consumers and third-party payers, including the Federal Government and State governments, to pharmaceutical manufacturers, patent holders, and other residual claimants. However, to some extent, these increased expenditures represent purchases of products that are more costly to manufacture and bring to market, and, therefore, would be social costs. We are unable to estimate the fraction of those increased expenditures on drugs that constitute social costs.

c. *Controller medication.* We estimate that the cost to current OTC epinephrine MDI users of filling additional prescriptions for controller medications would, on average, exceed the potential direct cost savings from reducing hospitalizations and emergency department visits by more than $280 per current OTC epinephrine MDI user.

In a study of almost 50,000 asthma patients (Ref. 45), the authors found that patients with low adherence to controller medication have significantly higher risk (odds ratio of 1.72) of emergency department visits or of hospitalization relative to patients with moderate or high adherence. The study found that patients receiving high daily doses of controller medication had the lowest risk (odds ratio of .37) of emergency department visits or of hospitalization. As discussed in section VII.D.3.a of this document, we estimate OTC epinephrine MDI users who do not use prescription medicines make roughly 100,000 to 200,000 emergency department visits and require about 25,000 to 55,000 hospitalizations annually. If they all were to visit their physicians, receive prescriptions for a controller medication, fill them, and use the medication, based on the results of the study of almost 50,000 asthma patients, we estimate 20 to 40 percent of these emergency department visits and hospitalizations could be avoided, equivalent to roughly 20,000 to 80,000 fewer emergency department visits [20 percent of 91,900 is 18,380; 40 percent of 209,532 is 83,813] and 5,000 to 10,000 fewer hospitalizations [20 percent of 24,850 is 4,970; 40 percent of 56,658 is 11,332]. Assuming the average cost for an emergency department visit for asthma is about $300 and the average cost of a hospitalization for asthma is roughly $7,500, as discussed in section D.3.a of this document, this would reduce health care costs by roughly $40 million to $100 million annually [($294.17 per visit x 18,380) + ($7565.84 per hospitalization x 4,970) = $41,236,000; ($294.14 per visit x 83,813) + ($7565.84 per hospitalization x 11,332) = $105,837,600]. This cost is roughly $70 to $80 per current OTC epinephrine MDI user per year [$41,236,000 / 584,218 OTC epinephrine only MDI users = $70.58; $105,837,600 / 1,332,016 OTC epinephrine only MDI users = $79.46].

We looked at a range of CFC-free controller medications such as FLOVENT HFA, ASMANEX TWISTHALER, PULMICORT TURBOHALER, and QVAR, and found the wholesale price of the smallest dose of the least expensive medication to be roughly $1.00 per day of therapy,[28] equivalent to roughly $370 per patient year of therapy. On average, the cost of increasing the use of controller medication among current OTC epinephrine MDI users who do not currently use prescription medicine would exceed the benefits, in terms of decreased emergency department visits and hospitalizations, by over $280 per person per year. This number would be lower if a greater fraction of people with asthma at high risk of emergency department visits were to begin using controller medication on a regular basis, and higher if a greater fraction of low risk people with asthma were to begin using controller medication on a regular

[28] Analysis completed by FDA based on information provided by IMS Health, IMS National Sales Perspective (TM), 2005, extracted March 2006.

basis. These estimates do not take into account the impact of asthma attacks on individuals' quality of life and productivity.

4. Effects on Medicaid and Medicare

As a result of the removal of OTC epinephrine CFC MDIs from the market, we estimate State and Federal Medicaid spending will increase $35 million to $250 million annually and that Federal Medicare spending, together with private spending by Medicare beneficiaries, will increase $20 million to $250 million annually. Some OTC epinephrine MDI users may be eligible for both Medicare and Medicaid. To the extent this population is large, these estimates overstate potential spending increases from this proposed rule by counting these individuals twice: once in Medicaid estimates and once in Medicare estimates. We are unable to estimate the size of the population of OTC epinephrine MDI users eligible for both programs.

a. *Medicaid*. We estimate that 20 to 25 percent of the costs of the removal of OTC epinephrine MDIs from the market will be born by State and Federal Medicaid programs, equivalent to $70 million to $250 million annually if Medicaid-eligible OTC epinephrine MDI users who do not use prescription medicine for their asthma were to self-medicate upon implementation of this proposed rule, and equivalent to $35 million to $85 million annually if Medicaid-eligible OTC epinephrine MDI users were to visit their physicians to obtain and fill prescriptions to enable them to switch to albuterol. Assuming epinephrine users with insurance, including Medicaid, are more likely to visit a doctor, and less likely to self-medicate, the costs of this proposed rule are more likely to fall in the $35 million to $85 million range.

According to proprietary surveys conducted by or for Wyeth between 1993 and 1994 (Wyeth slide 31), 27 percent to 33 percent of OTC epinephrine MDI users had incomes of less than $20,000 at the time the surveys were conducted. A 2005 Internet survey conducted by Wyeth found that 20 percent of OTC epinephrine MDI users had incomes of less than $25,000. Eligibility for Medicaid varies by State but is generally tied to the Federal poverty guidelines (Ref. 46). The 2006 Federal poverty guidelines establish a poverty threshold of $20,000 in annual income for a family of four (Ref. 47). Accordingly, if we assume 20 percent to 25 percent of OTC epinephrine MDI users are eligible for Medicaid, if Medicaid-eligible OTC epinephrine MDI users who do not use prescription medicine were to self-medicate, and if those who do self-medicate were to switch to albuterol, Federal Medicaid spending would increase roughly $70 million to $250 million annually [20 percent of $360 million = $72 million; 25 percent of 1 billion = $250 million]. If all current epinephrine users eligible for Medicaid were to instead visit their physicians and use prescription albuterol, we estimate that Federal Medicaid spending would increase by $35 million to $85 million dollars annually [20 percent of $170,857,175 = $34,171,435; 25 percent of $339,693,135 = $84,923,284]. These estimates exclude costs that may result from increased prescribing of controller medications, and do not take into account the impact of asthma attacks on individuals' quality of life and productivity.

b. *Medicare*. We estimate 10 percent to 25 percent of the costs of the removal of OTC epinephrine MDIs from the market will be paid by Federal Medicare spending and by Medicare beneficiaries. If all Medicare-eligible OTC epinephrine MDI users were to self-medicate upon implementation of this proposed rule, Federal Medicare spending and spending by Medicare beneficiaries would increase roughly $40 million to $250 million dollars annually. Alternatively, if all Medicare-eligible OTC epinephrine MDI users were to visit their doctors to obtain and fill prescriptions for albuterol, Federal Medicare spending and spending by Medicare beneficiaries would increase roughly $20 to $85 million annually. Assuming epinephrine users with insurance, including Medicare, are more likely to visit a doctor, and less likely to self-medicate, the costs of this proposed rule are more likely to fall in the $20 million to $85 million range.

According to proprietary surveys conducted by or for Wyeth between 1993 and 2005 (Wyeth slide 31), 16 percent to 33 percent of OTC epinephrine MDI users are over the age of 55, implying the percentage of epinephrine users over the age of 65, and therefore eligible for Medicare, must be lower. Accordingly, if we assume 10 percent to 25 percent of OTC epinephrine MDI users are over the age of 65, Medicare spending and private spending by Medicare beneficiaries would increase $40 million to $250 million annually if all Medicare-eligible OTC epinephrine MDI users were to self-medicate [10 percent of $360 million = $36 million; 25 percent of $1.0 billion = $250 million], and by $20 million to $85 million annually if they were all to visit their physicians for prescription albuterol [10 percent of $170,857,125 = $17 million; 25 percent of $339,693,135 = 84,923,284]. These estimates exclude costs that may result from increased prescribing of controller medications, and do not take into account the impact of asthma attacks on individuals' quality of life and productivity.

E. Alternative Phase-Out Dates

The alternatives we considered included the following phase-out dates:

1. December 31, 2008;
2. December 31, 2009;
3. December 31, 2010 (the proposed rule).

Spending per year does not differ among the regulatory alternatives. The only difference among the alternatives is how long the estimated costs shown in table 2 of this document would accrue. At some time in the near future, the unavailability of CFCs—not the proposed rule or an alternative—may lead to removal of OTC epinephrine from the marketplace. Our current belief is that bulk CFCs are likely to be unavailable in 2010 (see section VII.A), so the costs for the first alternative would be the present value of the annual costs for 2 years, 2008–2009, and the cost for the second alternative would be the present value of the costs for 1 year, 2009. The third alternative, which is the proposed rule, would have no quantifiable costs or benefits. We invite comments on these projections and on the costs and benefits of any other possible alternative effective dates, such as December 31, 2011 or 2012.

F. Sensitivity Analyses

The estimated costs summarized in table 2 incorporate a range of estimates about the price increases consumers and other payers will face, the size of the affected market, and the consequences of consumers' response to the removal of OTC epinephrine MDIs from the market. This represents the full range of uncertainty for the estimated effects of this proposed rule. The full range incorporates the ranges of estimates for the individual uncertain variables in the analysis.

In each section of the document, we show the ranges associated with each major uncertain variable, taking into account the possibility that in response to the removal of OTC epinephrine MDIs from the market, OTC epinephrine MDI users who do not currently use prescription medicines will either self-medicate or visit a physician to get an albuterol prescription. The estimated increases in emergency department visits and hospitalizations depend upon a range of estimates of the percentage of people with asthma that use OTC

epinephrine MDIs (15 to 20 percent) and the fraction of OTC epinephrine MDI users that do not use prescription medicines and are therefore more likely to self-medicate (somewhere between 33 and 57 percent), as well as the rate we estimate hospitalizations and emergency department visits will increase among this population (2.5 to 3.1 times).

Similarly, estimates of the impact of the removal of OTC epinephrine MDIs from the market on public and private spending depends on whether or not OTC epinephrine MDI users self-medicate, the above estimates on increased hospitalizations and emergency department visits, and the cost of those visits. A range of estimates of the percentage of adults with asthma that use OTC epinephrine MDIs (15 to 20 percent) and the fraction of OTC epinephrine MDI users that do not use prescription medicine for their asthma (somewhere between 33 and 57 percent), in addition to the overall size of the OTC epinephrine MDI market, determines the number of additional physician visits these users will require to switch from OTC epinephrine MDIs to albuterol MDIs. Estimated increases in spending on medicine depend on the size of the OTC epinephrine MDI market, and the price premium current OTC epinephrine MDI users can expect to pay for their medicine, roughly $16 to $25 per MDI.

G. Conclusion

Limits in available data prevent us from quantifying the costs and benefits of the proposed rule and weighing them in comparable terms. The benefits of international cooperation to reduce ODS emissions are potentially enormous but difficult to attribute to any of the small steps, such as this rulemaking, that make such cooperation effective. As discussed above in detail, the benefits of the removal of OTC epinephrine MDIs from the market include environmental and public health improvements from protecting stratospheric ozone by reducing CFC emissions. Benefits also include expectations of increased returns on investments in environmentally friendly technology, reduced risk of unexpected disruption of supply of CFC MDIs, and continued international cooperation to comply with the spirit of the Montreal Protocol, thereby potentially reducing future emissions of ODSs throughout the world. The removal of OTC epinephrine MDIs from the market could potentially cost public and private consumers of OTC epinephrine MDIs hundreds of millions of dollars annually, and increase hospitalizations and emergency department visits for asthma significantly. If CFCs cease to be available for OTC epinephrine MDIs before the effective date of a final rule removing the essential-use designation of OTC epinephrine MDIs, however, this proposed rule would have no benefits or costs. We specifically request comments on the costs and benefits of this proposed rule.

VIII. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because known current producers are not small entities and the likelihood that the proposed rule will not impose compliance costs, the agency does not believe that this proposed rule would have a significant economic impact on a substantial number of small entities. FDA requests comment on this issue.

IX. The Paperwork Reduction Act of 1995

We have tentatively concluded that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

X. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have tentatively determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Consequently, we do not currently plan to prepare a federalism summary impact statement for this rulemaking procedure. We invite comments on the federalism implications of this proposed rule.

XI. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written comments regarding this proposal. Submit a single copy of electronic comments or two copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

An upcoming public meeting on the essential-use status of OTC MDIs containing epinephrine will provide an additional opportunity for public comment. We will provide details on the meeting in a notice published in the **Federal Register** in the near future.

XII. References

The following references have been placed on display in the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.[29]

1. National Center for Health Statistics, ''Early Release of Selected Estimates Based on Data From the 2005 National Health Interview Survey,'' figure 15.4, available at *http://www.cdc.gov/nchs/data/nhis/earlyrelease/200606_15.pdf.*

2. Alkermes, Inc., press release, dated March 22, 2004, available at *http://www.alkermes.com/newsroom/showArticle.aspx?id=267.*

3. Fu, K. et al., ''Air®-Epinephrine: Inhalation Therapy for the Emergency Self-Treatment of Anaphylaxis,'' *Journal of Aerosol Medicine*, Vol. 16(2):190, June 2003.

4. Hendeles, L. et al., ''Response to Nonprescription Epinephrine Inhaler During Nocturnal Asthma,'' *Annals of Allergy, Asthma, and Immunology*, 95:530, December 2005.

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11. U.S. Census Bureau, ''Table HI01. Health Insurance Coverage Status and Type of Coverage by Selected Characteristics: 2004: All Races,'' available at *http://pubdb3.census.gov/macro/032005/health/h01_001.htm.*

[29]FDA has verified all Web site addresses cited in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document has published in the **Federal Register**.

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47. Department of Health and Human Services, notice, ''Annual Update of the HHS Poverty Guidelines,'' 71 FR 3848, January 24, 2006.

List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Devices, Drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Clean Air Act, and under authority delegated to the Commissioner of Food and Drugs, after consultation with the Administrator of the Environmental Protection Agency, it is proposed that 21 CFR part 2 be amended as follows:

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

1. The authority citation for 21 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 402, 409; 21 U.S.C. 321, 331, 335, 342, 343, 346a, 348, 351, 352, 355, 360b, 361, 362, 371, 372, 374; 42 U.S.C. 7671 *et seq.*

§ 2.125 [Amended]

2. In § 2.125, remove and reserve paragraph (e)(2)(v).

Dated: February 5, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

Editorial note: This document was received at the Office of the Federal Register on September 17, 2007.

[FR Doc. 07–4663 Filed 9–17–07; 12:01 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

[Docket No. DEA–275P]

RIN 1117–AA99

Changes to Patient Limitation for Dispensing or Prescribing Approved Narcotic Controlled Substances for Maintenance or Detoxification Treatment by Qualified Individual Practitioners

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Drug Enforcement Administration (DEA) is proposing to conform its regulations to recent statutory amendments to the Controlled Substances Act that changed certain patient limitations for practitioners who dispense or prescribe certain narcotic drugs for maintenance or detoxification treatment.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before November 19, 2007.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–275'' on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA **Federal Register** Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA **Federal Register** Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be sent directly to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov.* Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept attachments to electronic comments in Microsoft word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file formats other than those specifically listed here.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Drug Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and posted online and placed in the Drug Enforcement Administration's public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

FOR FURTHER INFORMATION CONTACT: Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Overview

On August 2, 2005, the President signed amendments to the Controlled Substances Act to increase the patient limitation on prescribing drug addiction treatments by qualified medical practitioners in group practices from 30 patients for each group to 30 patients for each qualified practitioner in a group (Pub. L. 109–56; 119 Stat. 591) (21 U.S.C. 823(g)(2)).

On December 29, 2006, the President signed amendments to the Controlled Substances Act to permit certain qualifying physicians to dispense and prescribe Schedule III, IV, and V narcotic controlled substances approved by the Food and Drug Administration specifically for use in maintenance or detoxification treatment to up to 100 patients at any one time, after the practitioner submits to the Secretary of Health and Human Services a notification of the practitioner's need and intent to treat the increased number of patients. The amendment was made as part of the Office of National Drug Control Policy Reauthorization Act of 2006 (ONDCPRA) (§ 1102 of Pub. L. 109–469, 120 Stat. 3502).

This Notice of Proposed Rulemaking (NPRM) would conform DEA regulations to Pub. L. 109–56 by removing the requirement in 21 CFR 1301.28(b)(iv) that limits to 30 the number of patients that could receive maintenance or detoxification treatment through a group practice. This change means that each qualifying practitioner whether working individually or in a group practice may offer maintenance and detoxification treatment to 30 patients at any one time. This NPRM would also conform DEA regulations to § 1102 of Pub. L. 109–469 by permitting certain qualifying physicians to treat up to 100 patients. To qualify to treat the additional patients, not sooner than one year after the practitioner submitted the initial notification, the practitioner must submit a second notification to the Secretary of Health and Human Services of the need and intent of the practitioner to treat up to 100 patients. Further, the practitioner must be a ''qualifying physician'' under 21 U.S.C. 823(g)(2)(G) and must have the capacity to refer the patients to whom the individual practitioner will provide narcotic drugs or combinations of narcotic drugs for appropriate counseling and other appropriate ancillary services (21 CFR 1301.28(b)(1)(i) and (ii)). These proposed amendments would not change the requirement that each practitioner must first qualify to prescribe and dispense these medications for maintenance and detoxification treatment, or must be prescribing these approved substances using the ''good faith'' exception, found within current regulations at 21 CFR 1301.28(e).

Background

On October 17, 2000, Congress passed the Drug Addiction Treatment Act of 2000 (DATA), amending the Controlled Substances Act (CSA) (21 U.S.C. § 801 *et seq.*) to establish ''waiver authority for physicians who dispense or prescribe certain narcotic drugs for maintenance

treatment or detoxification treatment'' (Pub. L. 106–310, title XXXV; 114 Stat. 1222, codified at 21 U.S.C. 823(g)(2)). Prior to DATA, the Controlled Substances Act and DEA regulations required practitioners who wanted to conduct maintenance or detoxification treatment using narcotic controlled drugs to be registered as a Narcotic Treatment Program (NTP) in addition to the practitioner's individual registration. The separate NTP registration authorized the practitioner to dispense or administer, but not prescribe, narcotic drugs.

With passage of DATA, DEA published a NPRM (68 FR 37429; June 24, 2003) proposing to amend the regulations affecting maintenance and detoxification treatment for narcotic treatment by establishing an exemption from the separate registration requirement. After consideration of the comments received on the NPRM, DEA published a Final Rule on June 23, 2005 (70 FR 36338). The June 23, 2005, Final Rule permitted the following:

(1) Qualifying physicians to dispense and prescribe Schedule III, IV, and V narcotic controlled drugs approved by the Food and Drug Administration specifically for use in maintenance or detoxification treatment.

(2) Narcotic-dependent patients to have one-on-one consultations with a practitioner in a private practice setting.

(3) Pharmacies to fill prescriptions for Schedule III, IV, and V narcotic controlled drugs approved by the Food and Drug Administration specifically for use in maintenance or detoxification treatment.

(4) Practitioners to offer maintenance and detoxification treatment with Schedule III, IV, and V narcotic controlled drugs approved by the Food and Drug Administration specifically for use in maintenance or detoxification treatment to no more than 30 patients in their private practices without having a second registration as a NTP.

The exemption and other amendments established by the Final Rule apply to individual practitioners working in traditional NTPs as well as any other practice setting. The rule does not affect the existing prohibition against prescribing any Schedule II narcotic controlled drugs for maintenance or detoxification treatment.

Under the provisions of DATA implementing regulations as codified in 21 CFR 1301.28(b)(1)(iii) and (iv), the 30-patient limitation applied equally to individual practices and to group practices (i.e., 30 patients per group), severely limiting the number of patients that could be treated by physicians in group practices.

Pursuant to Pub. L. 109–56 effective on August 2, 2005, and § 1102 of Pub. L. 109–469 effective on December 29, 2006, this NPRM would make conforming changes to DEA's regulations at 21 CFR 1301.28(b)(1)(iii) and (iv). Specifically, paragraph (b)(1)(iii) is proposed to be amended to permit the treatment of up to 100 patients by a qualifying practitioner if the necessary criteria are met and notification is submitted to the Secretary of Health and Human Services. Further, paragraph (b)(1)(iii) is proposed to be amended by removing the phrase ''Where the individual practitioner is not a member of a group practice,'' since there is no longer a distinction between practitioners in group practices and those practicing independently. Finally, paragraph (b)(1)(iv) is proposed to be deleted to remove language regarding members of group practices.

Relevant to the change regarding the treatment of up to 100 patients, the Director of the Center for Substance Abuse Treatment in the Department of Health and Human Services issued a letter announcing the statutory change as follows:

> Under ONDCPRA (effective December 29, 2006), physicians who meet the following criteria may notify the Secretary of Health and Human Services (HHS) of their need and intent to treat up to 100 patients at any time: (1) The physician must currently be qualified under DATA 2000; (2) at least one year must have elapsed since the physician submitted the initial notification for authorization; (3) the physician must certify their capacity to refer patients for appropriate counseling and other appropriate ancillary services; and (4) the physician must certify that the total number of patients at any one time will not exceed the applicable number.

DEA emphasizes that practitioners must meet these HHS criteria before prescribing a Schedule III, IV, or V controlled substance for narcotic maintenance or detoxification treatment to more than 30 patients at any one time.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator, Office of Diversion Control, has reviewed this regulation and hereby certifies that it has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) and that it will not have a significant economic impact on a substantial number of small entities. This NPRM would relieve a restriction on practitioners desiring to treat narcotic dependent patients by removing the 30 patient limit for group practices and by permitting certain qualifying physicians to treat up to 100 patients after certain criteria are met. Thus the changes would provide greater access to care for patients due to increased patient limits.

Executive Order 12866

The Deputy Assistant Administrator further certifies that this rule has been drafted in accordance with the principles in Executive Order 12866 § 1(b). It has been determined that this is a significant regulatory action and, therefore, this action has been reviewed by the Office of Management and Budget. This rule will not impose additional costs on practitioners as it simply increases the number of patients that a practitioner may treat for narcotic dependence. As previously noted, this change would provide greater access to care for patients due to the increased patient limits.

Executive Order 12988

This rule meets the applicable standards set forth in §§ 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Executive Order 13132

This rule does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have Federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign

based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

For the reasons set out above, 21 CFR part 1301 is proposed to be amended as follows:

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. §§ 821, 822, 823, 824, 871(b), 875, 877, 886a, 951, 952, 953, 956, 957.

2. § 1301.28 is proposed to be amended by revising paragraph (b)(1)(iii) and removing paragraph (b)(1)(iv) to read as follows:

§ 1301.28 Exemption from separate registration for practitioners dispensing or prescribing Schedule III, IV, or V narcotic controlled drugs approved by the Food and Drug Administration specifically for use in maintenance or detoxification treatment.

* * * * *

(b)(1) * * *

(iii) The total number of patients to whom the individual practitioner will provide narcotic drugs or combinations of narcotic drugs under this section will not exceed 30 at any one time unless, not sooner than 1 year after the date on which the practitioner submitted the initial notification to the Secretary of Health and Human Services, the practitioner submits a second notification to the Secretary of the need and intent of the practitioner to treat up to 100 patients. A second notification under this subparagraph shall contain the certifications required by subparagraphs (i) and (ii) of this paragraph. The Secretary of Health and Human Services may promulgate regulations to change the total number of patients.

* * * * *

Dated: September 13, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. E7–18531 Filed 9–19–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 950

[FHWA Docket No. FHWA–06–23597]

RIN 2125–AF07

Interoperability Requirements, Standards, or Performance Specifications for Automated Toll Collection Systems

AGENCY: Federal Highway Administration (FHWA); DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: As required under section 1604(b)(6) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), this proposed rule specifies the interoperability requirements for automated toll collection systems for the facilities that are tolled under any of the tolling programs contained in section 1604 of SAFETEA–LU. Specifically, this notice proposes to require facilities operating with authority under section 1604 of SAFETEA–LU to use electronic toll collection systems and for these systems to address their interoperability with other toll facilities. Although a nationwide interoperability standard has not yet been established, this proposed rule seeks to accelerate progress toward achieving nationwide interoperability by requiring these facilities to upgrade their electronic toll collection systems to the national standards whenever adopted. This document also provides notice of public meetings on this proposed regulation.

DATES: The public meeting will be held on Thursday, October 11, 2007, from 1:30 p.m. to 5 p.m., at the U.S. Department of Transportation headquarters conference center. Comments must be received on or before November 19, 2007. Late-filed comments will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period.

ADDRESSES: The October 11, 2007, public meeting will be held at the U.S. Department of Transportation headquarters conference center, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit* or fax comments to (202) 493–2251. Alternatively, comments may be submitted to the Federal eRulemaking portal at *http://www.regulations.gov*.

All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For technical questions or information about this notice of proposed rulemaking, contact Mr. Robert Rupert, FHWA Office of Operations, (202) 366–2194. For legal questions, please contact Mr. Michael Harkins, Attorney Advisor, FHWA Office of the Chief Counsel, (202) 366–4928, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit*. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. Alternatively, internet users may access all comments received by the DOT Docket Facility by using the universal resource locator (URL) *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: *http://www.archives.gov* or the Government Printing Office's Web page at *http://www.gpoaccess.gov/nara.*

Introduction

Section 1604 of SAFETEA–LU (Pub. L. 109–59, 119 Stat. 1144) includes provisions related to tolling of highways

and facilities. Specifically, section 1604 establishes or amends three tolling programs: (1) The Value Pricing Pilot Program; (2) the Express Lanes Demonstration Program; and (3) the Interstate System Construction Toll Pilot Program. For each toll program under this section, section 1604(b)(6) requires the Secretary of Transportation to promulgate a final rule specifying requirements, standards, or performance specifications for automated toll collection systems.

Section 1604(b)(6) also requires that in developing the final rule to maximize the interoperability of electronic collection systems, the Secretary shall maximize to the extent practicable three other areas:

(1) Accelerate progress toward the national goal of achieving a nationwide interoperable electronic toll collection system;

(2) Take into account the use of noncash electronic technology currently deployed within an appropriate geographical area of travel and the noncash electronic technology likely to be in use within the next five years; and

(3) Minimize additional costs and maximize convenience to users of toll facility and to the toll facility owner or operator.

Background

States are increasingly turning to tolling as a means of supplementing traditional methods of roadway financing and enhancing transportation mobility. The electronic collection of these tolls, which began in the mid 1980s, has grown dramatically over the past 25 years and is expected to grow even more over the next decade. The percentage of toll lanes capable of using electronic toll collection has grown from 36% in 1997 to nearly 80% in 2005.[1] According to a June 2006 report from the United States Government Accountability Office, 23 States have plans to build toll road facilities, including 7 States that are planning their first toll roads.[2]

As the toll industry has grown, toll agencies have used a variety of toll devices manufactured by various competitive companies. This resulted in islands of unique proprietary toll devices throughout the country. The early electronic toll collection systems used a variety of electronic and radio communications technologies to identify accountholders as they traveled through toll collection lanes and then charge the appropriate toll against the appropriate account. There was little interoperability among the systems, and users had to establish multiple accounts and obtain multiple radio devices in order to use electronic toll collection on different toll facilities.

The various toll agencies in the New York City area recognized the need to allow their users to move among their facilities with a common electronic toll collection technology and formed the Inter Agency Group (IAG). The IAG established a common accounting system that would enable users to set up an account with one toll collection agency that would be useable across multiple toll facilities. In the early 1990s, the IAG coined the term ''E–ZPass'' as a service mark for its common electronic toll collection system, and selected a vendor that all participating agencies would use for electronic tolling applications. The IAG and E–ZPass have grown to include 21 agencies in the mid-Atlantic, northeast, and Illinois. Similar efforts to regionalize electronic toll collection took place in Florida and California, resulting in common toll collection technologies for those areas.

As of 2005, there were about 20 million electronic toll customers across the country. The largest concentrations of electronic toll customers are on the east coast, with about 17 million users, and on the west coast, with over 2 million users.

Existing Noncash Electronic Toll Collection Technologies

Currently, the electronic toll collection systems in any given geographic region typically use similar techniques, but are not interoperable from region to region. These existing toll facilities use a communications technology known as Dedicated Short Range Communications (DSRC). DSRC is a short range microwave radio that is capable of communication with the roadside while a vehicle is moving at highway speeds. Currently, all DSRC devices used for electronic toll collection operate in the unlicensed 902 Megahertz (MHz) to 928 MHz band of the radio frequency spectrum. Tolls can be collected from motorists through a device called a ''transponder,'' which is about the size of a compact disk or a pocket calculator and is installed in a motorist's car or truck. The transponder communicates via DSRC with a ''reader'' installed over or near the lane of travel. The reader communicates with the appropriate financial accounting system and the motorist's toll account is debited for the proper toll amount without the need for stopping at a toll plaza.

Although the future will bring new entrants and new innovation, the electronic toll collection market has evolved in recent years such that there are essentially three de-facto ''standards'' employed in large numbers.

(1) The E–ZPass toll device is employed on virtually all of the toll roads in the mid-Atlantic, northeast coast, and Illinois with approximately 14 million users. This is a proprietary device whose intellectual property rights are owned by Mark IV Industries of Toronto, Canada. There are also other proprietary toll collection technologies used by smaller numbers of systems and users in Texas, Georgia, and Florida.

(2) The California Title 21 Electronic Toll Collection standard is used on the west coast with approximately 2 million users. This California specification is an ''open'' standard and currently there are two manufacturers, Transcore and Sirit.

(3) The American Society of Testing Materials (ASTM) V6 standard is used by the trucking industry for the electronic clearance of commercial vehicles by both Help Inc.'s Prepass system and by the I–75 Coalition NorPass system. This is an open standard currently manufactured by Raytheon and Mark IV.

National Interoperability

None of these de-facto standards are interoperable with one another. In an attempt to achieve interoperability in 1996 and 1997, the DOT encouraged and supported the development of a single standard for electronic toll collection. The ASTM established a standards committee; however, the companies in the toll market at that time could not agree on a single standard that would allow national interoperability.

During that same time frame, the DOT pursued the examination of a new frequency for DSRC devices that could be licensed and thus used for a variety of transportation applications including electronic toll collection. In 1997, the Intelligent Transportation Society of America (ITS America), acting on behalf of the transportation industry, filed a petition with the Federal Communications Commission (FCC) requesting the allocation of 75 MHz of spectrum at 5.85 Gigahertz (GHz) to 5.925 GHz. This allocation was granted by the FCC in late 1999, and is licensed for public safety and private applications.

As a result of the FCC's action, the DOT initiated the support of the

[1] U.S. DOT Intelligent Transportation Systems Joint Program Office, ITS Deployment Statistics Web site, *http://www.itsdeployment.its.dot.gov/Trendsgraph.asp?comp=ETC;* 2006.

[2] U.S. Government Accountability Office, Report number GAO–06–554, ''Highway Finance: States' Expanding Use of Tolling Illustrates Diverse Challenges and Strategies'' June 2006; *http://www.gao.gov/new.items/d06554.pdf.*

development of a new set of standards for DSRC at 5.9 GHz. (''5.9 GHz'' is the term used to refer to the spectrum between 5.85 GHz and 5.925 GHz.) The standards are being developed under the auspices of the Institute of Electrical and Electronic Engineers (IEEE). All of the current toll device manufacturers in the United States are participating in the development of these open standards and have agreed upon the electronic communications technology to be employed. In addition, the DOT is sponsoring the development of prototype DSRC equipment to implement the standards under development. The four manufacturers of electronic toll collection equipment in the United States as of 2005—Mark IV, Raytheon, Sirit, and Transcore—united to form the DSRC Industry Consortium to conduct this development. The current DSRC program is conducting tests of prototype equipment and these open standards for technical feasibility.

However, even if the technical communications standards are interoperable technologically, more must be done to ensure interoperability for electronic toll collection. Specifically, interoperability also requires ''back-office'' interoperability, i.e., properly identifying and accounting for electronic toll collection tags. The IAG provides this integrated accounting service for its members through its E–ZPass application. True national interoperability will require greater exchange of accounting and fiscal information among toll authorities and their financial agents. OmniAir, an independent, not-for-profit trade association created as a result of the International Bridge, Tunnel and Turnpike Association's (IBTTA) 5.9 GHz DSRC Next Generation Task Force, has developed a draft electronic toll collection requirements document and is developing a national interoperability specification for electronic payment services. Toll agencies that adopt the OmniAir specifications will be positioned to provide interoperable services for all toll users.

Development and approval of an open technical communications standard will be a significant step toward nationally interoperable electronic toll collection services. The adoption of an approved open standard by the DOT for use on all Federal-aid projects and other projects receiving tolling authority from the DOT will help to accelerate progress toward national interoperability. Any interoperability test for electronic toll collection would need to include not only the electronic communications, but also the accounting compatibility necessary to allow motorists to use various toll facilities without requiring multiple accounts.

Toll plazas and barriers reduce a facility's throughput of vehicles, resulting in traffic congestion and its associated hazards as the demand and volume of vehicles increases. Electronic tolling helps to mitigate congestion by eliminating the bottlenecks caused by toll plazas and barriers. For example, in 1995, researchers compared vehicle throughput on lanes with manual toll collections versus electronic toll collection on the Tappan Zee Bridge in New York. The manual collection lane accommodated up to 400–450 vehicles per hour while an electronic lane peaked at 1000 vehicles per hour.[3] Also, in another example, the E–ZPass electronic toll collection system saved commuters approximately 2.1 million hours of delay on the New Jersey Turnpike in 2000.[4] Electronic tolling may also address vehicle safety and property damage concerns associated with toll barriers. The FHWA solicits comments from States, toll authorities, or other groups that may have conducted studies to analyze the effects of electronic tolling on safety and property damage.

DOT Outreach Efforts

In preparing this NPRM, the FHWA met with representatives of the IBTTA to gather technical information and insight on its members' current state-of-practice for electronic toll collection. In addition, IBTTA shared information about activities it has been conducting related to interoperability, including establishing OmniAir as an independent, not-for-profit trade association addressing 5.9 GHz and interoperability.

General Discussion of the Proposal

This proposal is intended to comply with the mandate of section 1604(b)(6) of SAFETEA–LU to promulgate a final rule specifying the requirements, standards, or performance specifications for automated toll collection systems implemented under section 1604. Although the ultimate goal of 1604(b)(6) of SAFETEA–LU is to achieve a nationwide interoperable electronic toll collection system, the Department does not believe that it can effectively establish a national standard at this time. As explained above, the DSRC program is conducting tests of prototype equipment and open standards for technical feasibility. These new standards, when published, may form the basis of a future rulemaking that would establish the standards for a nationwide interoperable electronic toll collection system. However, with respect to this proposal, the Department believes that requiring toll agencies to take interoperability issues into consideration in developing its toll collections systems will address the objective of the statute to accelerate progress toward the goal of nationwide interoperability in the best way possible at the present time. As such, the FHWA proposes to require that the toll collection agency for any facility operating pursuant to authority under section 1604 of SAFETEA–LU consult with the FHWA regarding its proposed method for electronic toll collection, and explain how the toll collection technique achieves the highest reasonable degree of interoperability possible with other facilities. The selection and explanation should consider not only current toll collection technologies but also emerging technologies and standards that may come into use.

Additionally, this proposal would require toll agencies to develop reasonable methods to enable vehicle operators that are not enrolled in an interoperable toll collection program to use the toll facility. Agencies that operate tolling facilities that rely exclusively on electronic toll collection must address how they would accommodate users that have not enrolled in a compatible accounting system that provides for the collection of toll fees for use of the facility.

Lastly, the FHWA recognizes that privacy issues may arise in connection with the implementation, operation, and enforcement of electronic toll collection systems, largely as a result of toll tags being linked to an individual's account with a toll agency or transportation authority or through alternative accommodations. In order to mitigate this concern, this rulemaking proposes to require toll agencies to develop, implement, and make publicly available privacy policies designed to protect against the inappropriate, unnecessary, or unauthorized disclosure of any data that may be collected regarding a user's use of an electronic toll collection system. These policies would not be subject to Departmental approval, however. The Department solicits

[3] Lennon, L. ''Tappan Zee Bridge E–ZPass System Traffic and Environmental Studies,'' Paper presented at the 64th ITE Annual Meeting: 1995. ITS Benefits Database Link: *http:www.itsbenefits.its.dot.gov/its/benecost.nsf/0/BFFD6D277991A8C385269610051E2BE.*

[4] Operational and Traffic Benefits of E–ZPass to the New Jersey Turnpike, Prepared by the Wilbur Smith Associates for the New Jersey Turnpike Authority, New Jersey: August 2001. ITS Benefits Database Link: *http://www.itsbenefits.its.dot.gov/its/benecost.nsf/0/78B2ACEBB79ED67785256AC0006E29ED.*

comments related to the methods or means by which privacy concerns can be balanced with the environmental and congestion reducing advantages of electronic tolling.

This NPRM applies only to the tolling programs authorized under section 1604 of SAFETEA–LU. The authority to toll under a section 1604 program will be granted on a case-by-case basis and in accordance with the criteria listed in statute and this regulation.

In consideration of the above discussion, the FHWA requests comments on the following questions:

(1) How should a national electronic toll collection standard be pursued?

(2) What aspects of electronic toll collection should be standardized?

(3) How critical is the timing for establishing a national electronic toll collection standard?

(4) How should the national standard incorporate current technologies and functions?

(5) How should the national standard allow for changes in technologies over time?

(6) What are the personal privacy aspects of a national electronic toll collection standard and the technologies that may be used to achieve it?

Section-by-Section Discussion of the Proposal

Section 950.1 Purpose

This section states that the proposed regulations establish interoperability requirements, standards, and performance specifications for facilities that are granted tolling authority by any program authorized under section 1604 of SAFETEA–LU.

Section 950.3 Definitions

The specific terms that have special significance to agencies or facilities that are subject to these proposed regulations are defined in this section.

Section 950.5 Requirement To Use Electronic Toll Collection Technology

This section establishes the proposed requirement that all facilities that are granted tolling authority by any program under section 1604 of SAFETEA–LU must use electronic toll collection systems as the method for collecting tolls from vehicle operators unless the toll agency can demonstrate to the FHWA that some other method is either more economically efficient or will result in a safer operating conditions for the facility. However, since section 1604(b)(5) of SAFETEA–LU requires exclusive electronic toll collection for the Express Lanes Demonstration Program, the FHWA is not authorized to grant an exception to the electronic toll collection requirement for facilities granted toll authority under section 1604(b) of SAFETEA–LU. This rule further requires toll agencies to make reasonable accommodations to allow potential users who may not be enrolled in the applicable toll collection program to use the facility. Since subsection 1604(b)(6)(A) states that the interoperability rule be applied for ''automated toll collection systems implemented under this section,'' which includes subsections 1604(a), 1604(b), and 1604(c), this proposed interoperability requirement would apply the mandatory use of electronic toll collection to all the programs authorized under section 1604. Additionally, this section clarifies that a toll agency may use cash payment methods, such as toll booths, in areas that are not located in the toll facility's lanes of travel if the location and use of such methods do not create unsafe operating conditions on the toll facility.

Additionally, this rule would require toll agencies to develop and implement privacy policies to safeguard the disclosure of any data that may be collected concerning any user of a toll facility operating pursuant to authority under a 1604 toll program. The FHWA specifically requests comments on the privacy implications of this rule and potential measures that could be taken to ensure that these privacy interests are protected.

Section 950.7 Interoperability Requirements

This section establishes the proposed requirements for interoperability among electronic tolling systems for agencies or facilities that are granted tolling authority by any program authorized under section 1604 of SAFETEA–LU. Because of the differences that may arise in defining the potential users of a facility while maintaining interoperability, the FHWA requests comments on whether these proposed regulations allow for toll agencies to use different technologies.

In section 950.7(a), we propose to require the toll agency having jurisdiction over a facility that is tolled pursuant to any of the tolling programs under section 1604 of SAFETEA–LU to: identify the projected users of the facility; and identify the predominant electronic toll collection systems likely utilized by the users of the facility.

In section 950.7(b), we propose to require the toll agency to receive the FHWA's concurrence on its selection of the facility's electronic toll collection system. In section 950.7(c), we propose to require, in order to receive the FHWA's concurrence, the toll agency to demonstrate to the FHWA how the selected toll collection system achieves the highest reasonable degree of interoperability possible with other toll facilities. Additionally, the toll agency must explain, as provided at section 1604(b)(6)(B)(ii) of SAFETEA–LU, how the toll collection system takes into account the use of noncash electronic technology currently deployed within an appropriate geographic area of travel, as defined by the toll agency, and identify the noncash electronic technology likely to be in use within the next five years in that area. The facility's electronic toll collection system's design must include the communications requirements between roadside equipment and electronic toll transponders, as well as accounting compatibility requirements in order to ensure that users of the toll facilities are properly identified and tolls are charged to the appropriate account of the user.

In section 950.7(d), we propose to require all electronic toll collection systems on any facility that is tolled pursuant to any of the tolling programs under section 1604 of SAFETEA–LU to upgrade to the nationwide interoperability standards if established in a future rulemaking by the FHWA. As explained above, this proposed rule seeks to accelerate progress toward nationwide interoperability by requiring any facility that is tolled pursuant to authority from any of the toll programs at section 1604 of SAFETEA–LU to upgrade its electronic toll collection system to operate under any nationwide standard subsequently established.

In section 950.7(e), we propose to exempt all toll facilities that are currently being tolled under the Value Pricing Pilot Program from this proposed rule. The value pricing program was originally established in the section 1012(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240). Thus, applying this rule to electronic toll collection systems that are already operational may be burdensome. However, any change to the facility's toll collection system after the effective date of the final rule would be subject to the regulations proposed in this rule.

Section 950.9 Enforcement

This section discusses remedial actions for agencies or facilities that fail to comply with the proposed requirements in section 950.7.

We propose to suspend the tolling authority of any facility that does not comply with the requirements of this rule. However, we would be able to extend the tolling authority for any such

facility if the applicable toll agency demonstrates that it is taking the necessary steps to come into compliance with the regulations.

Public Meeting

The public meeting will be held on Thursday, October 11, 2007, at the U.S. Department of Transportation headquarters conference center. The meeting will be held from 1:30 p.m. to 5 p.m.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received before, during, and after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action would be a significant regulatory action within the meaning of Executive Order 12866 and would be significant within the meaning of Department of Transportation regulatory policies and procedures. This action is considered significant because of the substantial State and local government and public interest in the requirements for automated toll collection systems. This rulemaking proposes interoperability requirements, standards, and performance specifications for toll projects initiated under section 1604 of SAFETEA–LU that use electronic toll collection. Section 1604 of SAFETEA–LU establishes or amends three tolling programs: (1) The Value Pricing Pilot Program, which has a maximum of 15 cooperative agreements; (2) the Express Lanes Demonstration Program, which has a maximum of 15 tolling projects; and (3) the Interstate System Construction Toll Pilot Program, which has a maximum of 3 tolling projects. This rulemaking only establishes conditions on a Federal grant of authority for toll programs under section 1604 and does not require a State to impose tolls on any particular facility nor mandate how a State or toll authority operates, maintains or enforces its tolling program.

It is anticipated that the economic costs of this rulemaking would be minimal while the benefits could be significant. These proposed changes are not anticipated to adversely affect, in a material way, any sector of the economy. Since this proposed rule only applies to new projects initiated under section 1604 of SAFETEA–LU, no significant encumbrances are added to the project's design or implementation.

Interoperability will afford potential reductions in implementation and operating costs in several ways for both the implementing agencies and the public. First, it will allow the leveraging of existing resources, specifically the toll transponders that are being used by vehicle operators. By designing for interoperability, the new electronic toll collection project will not need to distribute as many toll transponders as it would if it designed a unique toll collection system. The public users will not need to purchase or fund additional devices and accounts. Second, the operating cost for an electronic toll lane is less than one-tenth that of a standard lane. A 1997 report indicated that the Oklahoma Turnpike Authority spent approximately $16,000 per year on the operational cost of an electronic toll collection lane. In contrast, the Authority spent approximately $176,000 per year to operate a manual toll collection lane. Third, there are also environmental savings as noted above. Finally, increasing access to electronic toll lanes will decrease time spent waiting to pay tolls. For example, attended toll collection facilities can process approximately 300 vehicles per hour, or 12 seconds per vehicle. Dedicated electronic toll collection facilities can process approximately 1,200 vehicles per hour, or 3 seconds per vehicle.[5] Using a conservative estimate for a queue of 4 vehicles for processing per lane, the delay for not using electronic toll collection equals 36 seconds. During peak periods, queues would be longer and delays increased. When multiplied by the number of transactions, these time savings can be considerable based on the value of $15+ per hour that an average person in the United States earns. While the total savings are dependant on how many new systems are built, they could be considerable. Costs would be dependent on the methods that are instituted to collect payments. For example, it may take longer to pay using a lane that allows for multiple types of payment as opposed to lanes dedicated to electronic toll collection or barrier-free collection techniques. However, the Department believes that these differences would be minimal or more than offset by the delays caused by current systems. The Department seeks comments on these issues from both government entities and the public.

Therefore, this proposed rulemaking will result in only minimal costs to those affected. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the FHWA has evaluated the effects of this proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities.

This rulemaking does not change the roles or responsibilities of small entities in electronic toll collection projects. The rulemaking neither improves nor worsens small entities opportunities to participate in electronic toll collection projects, so results in no economic affect on the small entities. For these reasons, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector. Additionally, the definition of ''Federal Mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made to the program by the Federal

[5] Tollways Volume 2, Number 3, by IBTTA, 2005; The Path to Open Road Tolling, by Timothy O. Gallagher and Harold W. Worrall, pgs. 11–21.

Government. The Federal-aid highway program permits this type of flexibility. This rulemaking only establishes conditions on a Federal grant of authority for toll programs under section 1604 and does not require a State, public authority, or private entity designated by a State, to impose tolls on any particular facility nor mandates how a State or toll authority operates, maintains or enforces its tolling program.

Executive Order 13132 (Federalism Assessment)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this proposed action would not have sufficient federalism implications to warrant consultation with the States. The FHWA has also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program. Accordingly, the FHWA solicits comments on this issue.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this proposed action would not have any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights. The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action would not cause any environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. The proposed rulemaking addresses interoperability requirements, standards, or performance specifications for toll projects initiated under section 1604 of SAFETEA–LU that use electronic toll collection and would not impose any direct compliance requirements on Indian tribal governments.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001. We have determined that this is not a significant energy action under that order since it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 950

Communications equipment, Electronic products, Highways and roads, Motor vehicles, Radio, Telecommunication, Transportation.

Issued on: September 12, 2007.

J. Richard Capka,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to add a new part 950 to title 23, Code of Federal Regulations, to read as follows:

PART 950—ELECTRONIC TOLL COLLECTION

Sec.
950.1 Purpose.
950.3 Definitions.
950.5 Requirement to use electronic toll collection technology.
950.7 Interoperability requirements.
950.9 Enforcement.

Authority: 23 U.S.C. 109, 315; sec. 1604(b)(5) and (b)(6), Pub. L. 109–59, 119 Stat. 1144; 49 CFR 1.48.

§ 950.1 Purpose.

The purpose of this part is to establish interoperability requirements, standards, and performance specifications for toll facilities that are tolled under section 1604 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59; 119 Stat. 1144) that use electronic toll collection.

§ 950.3 Definitions.

1604 toll program refers to any of the tolling programs authorized under section 1604 of SAFETEA–LU. These programs include the Value Pricing Pilot Program, the Express Lanes Demonstration Program, and the Interstate System Construction Toll Pilot Program.

Dedicated short-range communications means a microwave radio that is capable of short-range communication with the roadside while a vehicle is moving at highway speeds.

Electronic toll collection means the ability for vehicle operators to pay tolls without stopping their vehicles through the use of dedicated short-range communications between onboard vehicle and roadside devices.

Toll agency means the relevant public or private entity or entities to which toll authority has been granted for a facility under a 1604 toll program.

§ 950.5 Requirement to use electronic toll collection technology.

(a) Any toll agency operating a toll facility pursuant to authority under a 1604 toll program shall use an electronic toll collection system as the method for collecting tolls from vehicle operators for the use of the facility unless the toll agency can demonstrate to the FHWA that some other method is either more economically efficient or will make the facility operate more safely. If a facility is collecting tolls pursuant to section 1604(b) of SAFETEA–LU, the toll agency shall only use electronic toll collection systems. Nothing in this subsection shall prevent a toll agency from using cash payment methods, such as toll booths, in areas that are not located in the toll facility's lanes of travel if the location and use of such methods do not create unsafe operating conditions on the toll facility.

(b) A toll agency using electronic toll collection technology must develop and implement reasonable methods to enable vehicle operators that are not enrolled in a toll collection program that is interoperable with the toll collection system of the relevant toll facility to use the facility.

(c) A toll agency using electronic toll collection technology must develop, implement, and make publicly available privacy policies to safeguard the disclosure of any data that may be collected through such technology concerning any user of a toll facility operating pursuant to authority under a 1604 toll program, but is not required to submit such policies to FHWA for approval.

§ 950.7 Interoperability requirements.

(a) For any toll facility operating pursuant to authority under a 1604 toll program, the toll agency shall—

(1) Identify the projected users of the facility; and

(2) Identify the predominant toll collection systems likely utilized by the users of the facility.

(b) Based on the identification conducted under subsection (a), the toll agency shall receive the FHWA's concurrence on the proposal for the facility's toll collection system's standards and design.

(c) In requesting the FHWA's concurrence, the toll agency shall demonstrate to the FHWA that the selected toll collection system and technology achieves the highest reasonable degree of interoperability possible with other toll facilities. The toll agency shall also explain to the FHWA how the toll collection system takes into account the use of noncash electronic technology currently deployed within an appropriate geographic area of travel (as defined by the toll agency) and identify the noncash electronic technology likely to be in use within the next five years in that area. The facility's toll collection system's design shall include the communications requirements between roadside equipment and toll transponders, as well as accounting compatibility requirements in order to ensure that users of the toll facilities are properly identified and tolls are charged to the appropriate account of the user.

(d) A toll agency that operates any toll facility pursuant to authority under a 1604 toll program must upgrade its toll collection system to meet any applicable standards and interoperability tests that have been officially adopted through rulemaking by the FHWA.

(e) With respect to facilities that are tolled pursuant to the Value Pricing Pilot Program, this part only applies if tolls are imposed on a facility after the effective date of this rule. However, such facility is subject to this part if the facility's toll collection system is changed or upgraded after the effective date of the regulations in this part.

§ 950.9 Enforcement.

(a) The tolling authority of any facility operating pursuant to authority under a 1604 toll program shall be suspended in the event the relevant toll agency is not in compliance with this part within six (6) months of receiving a written notice of non-compliance from FHWA. If the toll agency demonstrates that it is taking the necessary steps to come into compliance within a reasonable period of time, FHWA shall extend such tolling authority.

(b) The FHWA may take other action as may be appropriate, including action pursuant to § 1.36 of this title.

[FR Doc. E7–18529 Filed 9–19–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103842–07]

RIN 1545–BG33

Qualified Films Under Section 199; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations under section 199 of the Internal Revenue Code. These regulations involve the deduction for income attributable to domestic production activities under section 199 and affect taxpayers who produce qualified films under section 199(c)(4)(A)(i)(II) and (c)(6) and taxpayers who are members of an expanded affiliated group under section 199(d)(4).

DATES: The public hearing, originally scheduled for October 2, 2007, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Richard A. Hurst of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION: A notice of public hearing that appeared in the **Federal Register** on Thursday, June 7, 2007 (72 FR 31478), announced that a public hearing was scheduled for October 2, 2007, at 10 a.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 199 of the Internal Revenue Code.

The public comment period for these regulations expired on September 5, 2007. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, September 11, 2007, no one has requested to speak. Therefore, the public hearing scheduled for October 2, 2007, is cancelled.

LaNita Van Dyke,

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

[FR Doc. E7–18507 Filed 9–19–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, 7, and 24

[Notice No. 75; Re: Notice No. 73]

RIN 1513–AB07

Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages; Comment Period Extension

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: In response to an industry member request, the Alcohol and Tobacco Tax and Trade Bureau extends the comment period for Notice No. 73, Labeling and Advertising of Wines, Distilled Spirits, and Malt Beverages, a notice of proposed rulemaking published in the **Federal Register** on July 31, 2007, for an additional 90 days.

DATES: Written comments must be received on or before January 27, 2008.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov* (Federal e-rulemaking portal; follow the instructions for submitting comments); or
- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

You may view copies of this notice, Notice No. 73, and any comments we receive about the proposals described in Notice No. 73 under the appropriate docket number on the Regulations.gov Web site at *http://www.regulations.gov.* A link to the Regulations.gov Web site is also available on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml.* In addition, you may view copies of the same materials described above by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, telephone (202) 927–2400.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 128, Morganza, MD 20660; telephone (301) 290–1460; or Joanne C. Brady, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 45797, Philadelphia, PA 19149; telephone (215) 333–7050.

SUPPLEMENTARY INFORMATION: On July 31, 2007, The Alcohol and Tobacco Tax and Trade Bureau (TTB) published Notice No. 73, Labeling and Advertising of Wines, Distilled Spirits, and Malt Beverages, in the **Federal Register** (72 FR 41860). In that notice of proposed rulemaking, TTB requests public comment on possible changes to the labeling and advertising requirements of alcohol beverage products regulated by TTB. When published, the comment period for TTB Notice No. 73 was scheduled to close on October 29, 2007.

After the publication of Notice No. 73, TTB received a request from Wine America, a national association of American wineries to extend the comment period for an additional 90 days beyond the October 29, 2007 closing date. In support of their extension request, Wine America indicates that the wine industry is now entering the grape harvest season, which is its busiest time of the year. They further note that because of this, wine industry members would not have adequate time to address the rulemaking comment request in a comprehensive manner.

In response to this request, TTB extends the comment period for Notice No. 73 for an additional 90 days. Therefore, comments on Notice No. 73 are now due on or before January 27, 2008.

Drafting Information

Lisa M. Gesser of the Regulations and Procedures Division drafted this notice.

Signed: September 10, 2007.

John J. Manfreda,

Administrator.

[FR Doc. E7–18510 Filed 9–19–07; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2006–0583; FRL–8470–9]

Extension of Public Comment Period for Proposed Rule on Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of California; PM–10; Affirmation of Determination of Attainment for the San Joaquin Valley Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: The EPA is announcing an extension of the public comment period for the proposed rule entitled ''Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of California; PM–10; Affirmation of Determination of Attainment for the San Joaquin Valley Nonattainment Area.'' The proposed rule was initially published in the **Federal Register** on August 27, 2007. Written comments on the proposed rule were to be submitted to EPA on or before September 26, 2007 (a 30-day comment period). The EPA is extending the public comment period until October 26, 2007.

DATES: The public comment period for this proposed rule is extended until October 26, 2007.

ADDRESSES: Submit your comments, identified by docket number EPA–R09–OAR–2006–0583, by one of the following methods:

(1) *Federal eRulemaking portal: http://www.regulations.gov.*

(2) *E-mail: lo.doris@epa.gov.*

(3) *Mail or deliver:* Doris Lo (AIR–2), 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 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 the *www.regulations.gov* or e-mail. *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.

Docket: The index to the docket for this action is available electronically at *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 directly below.

FOR FURTHER INFORMATION CONTACT: Doris Lo, EPA Region IX, (415) 972–3959, *lo.doris@epa.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was signed by the Regional Administrator on August 15, 2007 and published in the **Federal Register** on August 27, 2007 (72 FR 49046). EPA has received a request for an additional 30 days to comment on the proposed rule and is granting that request. Therefore EPA is extending the comment period until October 26, 2007.

Dated: September 13, 2007.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. E7–18586 Filed 9–19–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 173, and 175

[Docket No. PHMSA–2006–25446 (HM–243)]

RIN 2137–AE19

Hazardous Materials: Fuel Cell Cartridges and Systems Transported on Board Passenger Aircraft in Carry-on Baggage

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA is proposing to amend the Hazardous Materials Regulations (HMR) to permit certain fuel cell cartridges and fuel cell systems designed for portable electronic devices to be transported by passengers and crew in carry-on baggage on board passenger-carrying aircraft. The proposed rule would cover fuel cells containing certain hazardous materials (flammable liquids, including methanol; formic acid; certain borohydride materials; or butane) and meeting certain performance and consumer use standards, which we are proposing to incorporate by reference into the HMR. We have evaluated the possible transportation safety risks presented by these fuel cell cartridges and systems and have determined they may safely be transported in the cabin of a passenger-carrying aircraft.

DATES: Written comments should be submitted on or before November 19, 2007.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2006–25446 (HM–243) by any of the following methods:

- *Web site:* Until September 27, 2007, electronic submissions to the DOT Docket Management System (DMS), located at *http://dms.dot.gov.* Starting on September 28, 2007, all electronic submissions must be made to the Federal Docket Management System's (FDMS) eRulemaking Portal located at *http://www.regulations.gov,* and the information in the DOT DMS will be migrated to the FDMS. This work is being done as part of a larger project to consolidate the federal rulemaking docket systems. Please note the FDMS is significantly different from the DOT DMS and may assign a new docket number to each existing docket. Follow the instructions specific to each docket Web site for submitting comments. On December 31, 2007, the DOT DMS will be permanently decommissioned.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to the docket management system, including any personal information provided. Please see the Privacy Act heading under **SUPPLEMENTARY INFORMATION.**

Docket: For access to the dockets to read background documents or comments received, go to *http://dms.dot.gov,* and after September 28, 2007, to *http://www.regulations.gov* at any time or to Docket Operations, U.S. Department of Transportation (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Eileen Edmonson, Office of Hazardous Materials Standards, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration (PHMSA) 1200 New Jersey Avenue, SE., Washington, DC 20590, facsimile telephone number (202) 366–7435, or by e-mail to *Eileen.Edmonson@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Fuel cell cartridges and fuel cell systems are an emerging energy technology developed to provide a more efficient, longer-lasting, and renewable power source for electrically operated equipment. Fuel cells are designed to replace, augment, or recharge existing battery sources. Various types of fuels may be used in fuel cell systems, including but not limited to gases meeting the criteria for classification as Division 2.1 (flammable gases), solids meeting the criteria for classification as Division 4.3 (dangerous when wet), and liquids meeting the criteria for classification as Class 3 (flammable) or Class 8 (corrosive) material. Specific materials used in fuel cells include methanol and other types of flammable liquids, butane, hydrogen in metal hydride, borohydrides, and formic acid.

II. Current HMR Requirements Applicable to the Transportation of Fuel Cells

Under the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180), fuel cells generally must be transported in accordance with requirements applicable to the material they contain. Thus, a fuel cell containing a corrosive material must conform to the packaging and hazard communication requirements applicable to that corrosive material when offered for transportation. After careful evaluation of possible transportation safety risks, PHMSA adopted packaging, testing, and hazard communication requirements for transporting fuel cell systems and fuel cell cartridges containing flammable liquids, including methanol or methanol and water solutions, as cargo by all modes (final rule published December 29, 2006; 71 FR 7896). The HMR requirements are consistent with international transportation standards applicable to the transportation of fuel cell cartridges and systems containing flammable liquids in the 14th Revised Edition of the UN Recommendations on the Transport of Dangerous Goods (UN Recommendations).

III. International Standards Applicable to the Transportation of Fuel Cells

The International Civil Aviation Organization (ICAO) adopted provisions for transporting fuel cell systems and fuel cell cartridges containing flammable liquid as cargo on board aircraft in the 2007–2008 edition of the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). These provisions are consistent with those for fuel cell systems and cartridges in the UN Recommendations. At that time, ICAO also adopted under Section 8; 1.1.2(r) provisions for transporting fuel cell systems and cartridges containing

flammable liquids (including methanol), formic acid, and butane, in carry-on baggage on board passenger-carrying aircraft under certain conditions. This passenger carry-on authorization applies to fuel cell cartridges with a maximum quantity of 200 ml (6.76 ounces) for liquids, 200 ml (6.76 ounces) for metal fuel cell cartridges containing butane, and 120 ml (4.1 ounces) for non-metallic fuel cell cartridges containing butane. No more than two spare fuel cell cartridges are allowed per passenger.

One of the conditions for the passenger authorization in the ICAO Technical Instructions is that the fuel cell systems and cartridges must conform to the industry technical specification governing the design and consumer use of fuel cell cartridges, power units, and power systems developed by the IEC. The IEC Specification No. IEC/PAS 62282–6–1 First Edition, with Technical Corrigendum 1, 2006, addresses fuel cell systems with outputs that do not exceed 60 volts and 240 watts. The IEC specification provides detailed manufacturing, safety, and testing requirements to address use, misuse, and consumer transportation. To ensure the capability of the fuel cell and cartridge to withstand normal conditions of consumer handling and transportation, the specification requires various design type tests such as pressure differential, vibration, temperature cycling, high temperature exposure, drop, compressive loading, connection cycling, external short circuit, and long-term storage.

Members of the fuel cell industry and the IEC prepared and submitted proposals (included in this docket) to the ICAO Dangerous Goods Panel that the Panel considered in making its decision to permit certain fuel cell systems and cartridges to be transported by passengers on board aircraft beginning on January 1, 2007. The proposals provide an assessment of the benefits and risks associated with transporting fuel cell systems and cartridges containing butane, formic acid, methanol, hydrogen stored in metal hydrides, and sodium borohydride-based and potassium borohydride-based fuels. PHMSA conducted its own independent technical assessment of the safety risks associated with each of the proposed fuel cell system and cartridge technologies; based on this evaluation, PHMSA supported the passenger provisions adopted in the ICAO Technical Instructions.

IV. Flammable Gas (Butane) and Leakage Criteria

In our technical evaluation for this NPRM, PHMSA, in coordination with the Federal Aviation Administration's (FAA's) William J. Hughes Technical Center (FAA Tech Center), conducted an additional examination specific to the design type testing criteria for fuel cell cartridges containing liquefied flammable gas (butane). This evaluation concluded that the industry technical specification developed to govern the design and use of fuel cell cartridges and systems, IEC/PAS 62282–6–1, required amendment to ensure fuel cells containing a flammable gas are designed and tested to a standard that is equivalent to the safety standard established for certain non-bulk gas packagings in the HMR.

Based on the PHMSA and FAA evaluations, the ICAO Dangerous Goods Panel at its Working Group 2006 meeting (October 25–November 3, 2006) recommended that the IEC amend its fuel cell specification to mandate a zero-leak standard as a basis for successfully passing the design-type tests. This zero-leak standard would be demonstrated by subjecting the cartridge test sample to a water bath test (consistent with Section 6.2.4.1 of the UN Recommendations) after each design type test. The IEC revised its test protocols and acceptance criteria and issued an addendum (included in this docket) to the IEC PAS 62282–6–1 on April 18, 2007, published as ''IEC/PAS 62282–6–1 First Edition, with Technical Corrigendum 1, 2006.'' The IEC plans to continue to review this standard for possible improvements. PHMSA will monitor further developments to the standard and, subject to technical review, may propose to adopt a later version in a subsequent rulemaking.

V. Petitions for Rulemaking

On March 2, 2006, the U.S. Fuel Cell Council petitioned PHMSA to permit airline passengers and crew to transport fuel cell systems and cartridges in carry-on baggage (Petition No. P–1475). In its petition, the U.S. Fuel Cell Council requests that PHMSA revise § 175.10 to permit portable electronic devices, such as cameras, laptop computers, and hand-held audio devices, powered by fuel cell systems and cartridges containing flammable liquid, formic acid, or butane to be transported by passengers and crew on passenger-carrying aircraft under the conditions adopted by ICAO. On August 23, 2006, Medis Technologies, Ltd., and Millennium Cell, Inc., petitioned PHMSA to permit fuel cell systems and cartridges containing Class 8 borohydride materials to be transported by passengers and crew in carry-on baggage on board passenger-carrying aircraft (Petition No. P–1483). Medis Technologies and Millennium Cell assert that Class 8 borohydride materials present the same risks in transportation as formic acid, also a Class 8 material. Both petitions may be viewed until September 27, 2007, in the DMS docket for this rulemaking at *http://dms.dot.gov*, and beginning on September 28, 2007, in the FDMS docket for this rulemaking at *http://www.regulations.gov.*

VI. Proposals in This NPRM

In this NPRM, we are proposing to permit the transportation in carry-on baggage on passenger-carrying aircraft of fuel cell cartridges and systems containing Class 3 flammable liquids, including methanol; formic acid and borohydride materials meeting the definition for a Class 8 material; and butane, a Division 2.1 gas. As proposed in this NPRM, the fuel cells must conform to certain performance criteria. The proposals in this NPRM are consistent with the passenger authorizations adopted for the 2007–2008 edition of the ICAO Technical Instructions.

Based on our assessment to date, we agree with the U.S. Fuel Cell Council that fuel cell cartridges and systems containing flammable liquids, formic acid, and butane do not pose an unreasonable safety risk when carried on board aircraft by passengers and crew members, provided they meet the specified performance standards. We also agree with Medis Technologies and Millennium Cell that fuel cell cartridges and systems containing borohydride materials pose similar safety risks and will operate in a similar manner as those containing formic acid.

It is important to note, however, that we are continuing to work with the FAA Tech Center to evaluate the safety risks posed by the air transportation of fuel cell cartridges and systems containing various types and classes of hazardous materials. We expect to conclude this evaluation prior to issuing a final rule under this docket; it will be placed in the docket for this rulemaking.

As indicated above, we are proposing to require fuel cell cartridges and systems to meet rigorous performance criteria that are consistent with the conditions applicable to the passenger authorization in the ICAO Technical Instructions. First, we are proposing to incorporate into the HMR the industry technical specification and addendum developed by the IEC governing the

design and consumer use of fuel cell cartridges, power units, and power systems (IEC/PAS 62282–6–1 First Edition, with Technical Corrigendum 1, 2006). The IEC technical specification is a comprehensive standard that addresses design, manufacturing, testing, and transportation specific to micro-fuel cells. It prescribes requirements for valves, filling, packaging performance, failure mode analysis, consumer refilling, materials of construction, exterior and exhaust temperature limits, warnings, certification, markings, and manufacturers' instructions. As revised by the recent addendum, the IEC specification mandates a zero-leak standard as a basis for successfully passing the design-type tests and, thus, is equivalent to the safety standard established for certain non-bulk gas packagings in the HMR. We also propose to limit fuel cell cartridges and systems carried by airline passengers and crew to those marked ''APPROVED FOR CARRIAGE IN AIRCRAFT CABIN ONLY'' by the manufacturer. This marking is the manufacturer's certification that the fuel cell cartridges and systems conform to the performance standard established in the revised IEC technical specification.

In addition, in this NPRM, we are proposing to limit the amount of hazardous material that may be contained in each individual fuel cell authorized for transportation in carry-on baggage on board passenger-carrying aircraft. Consistent with the standard adopted for the ICAO Technical Instructions, we propose to limit fuel cells containing liquid fuels to 200 mL (6.76 ounces) of fuel per cartridge, fuel cells containing liquefied gases to 200 mL (6.76 ounces) of fuel per metal cartridge and 120 mL (4 fluid ounces) of fuel per non-metallic fuel cell cartridge, and fuel cells containing solid materials to 200 g (7 ounces) of fuel per cartridge. Also consistent with the ICAO Technical Instructions, each passenger or crew member would be permitted to carry up to two spare cartridges.

To reduce possible releases, we propose to prohibit passengers and crew members from refilling fuel cell cartridges and systems, except to install a spare cartridge. In addition, we propose to limit fuel cell cartridges and systems carried by passengers and crew members to a type and design that will not continue to charge batteries when the device being powered is not in use. Again, these prohibitions are consistent with the passenger authorizations for fuel cells adopted under the ICAO Technical Instructions.

VII. Transportation Security Administration

The Department of Homeland Security's Transportation Security Administration (TSA) is authorized to prescribe security standards for all modes of transportation, including aviation (49 U.S.C. 114(d)). Under this authority, TSA prohibits airline passengers from carrying weapons, explosives, or incendiary devices and has published several interpretative rules to provide guidance on the types of property TSA considers subject to the prohibition (68 FR 7444; 68 FR 9902; 70 FR 9877).

As PHMSA developed this NPRM, we consulted with TSA concerning current security limitations applicable to the carriage of fuel cells by aircraft passengers and crew members and shared with TSA our technical analysis supporting this rulemaking. We understand that TSA is considering whether any additional security measures for fuel cells or fuel cell systems may be appropriate. In any case, this rulemaking would not limit TSA's authority to address security concerns related to the transportation of fuel cells or fuel cell systems.

On September 26, 2006, TSA imposed a strict limit on liquids, gels, and aerosols an aircraft passenger is permitted to take through a security checkpoint in carry-on baggage. TSA limits these materials to 3-ounce (100 mL) or smaller containers placed in a clear quart-size, zip-top plastic bag. Fuel cell cartridges and systems would be subject to this limitation, notwithstanding any rule adopted in this proceeding.

VIII. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This notice of proposed rulemaking is published under the following statutory authorities:

1. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This NPRM proposes regulations to promote the safe transportation of fuel cells carried by airline passengers and crew members. To this end, as detailed above, PHMSA proposes to limit the types and quantities of fuel cell cartridges and fuel cell systems permitted on passenger aircraft, prescribe specific performance-based design and packaging criteria for these articles, and limit the manner in which they may be used during air transportation.

2. Section 5120 of Federal hazardous materials transportation law (49 U.S.C. 5120), authorizes the Secretary of Transportation to participate in the development of international standards for the transportation of hazardous materials and grants the Secretary broad discretion to harmonize the HMR with international standards. Section 5120(c) permits the Secretary to establish more stringent standards for transportation in the United States as necessary in the public interest. The proposals in this NPRM would harmonize the HMR with international requirements for fuel cell systems and cartridges to the extent these are consistent with PHMSA's safety objectives.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This NPRM is a non-significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034].

Fuel cells are an emerging technology designed to meet the growing demand for alternative energy sources. Fuel cell technology has not yet achieved wide-spread commercialization, but is being developed for use in mobile phones, laptop computers, and, to a lesser extent, camcorders, digital cameras, and personal digital assistants (''PDAs''). The U.S. Fuel Cell Council found, as a result of its 2006 survey of 181 industry respondents, that sales from 2005 to 2006 of all fuel cell and fuel cell-based systems, of which those designed for portable electronic devices are currently a small part, increased by 7 percent to $353 million, and research and development expenditures and industry employment over the same period increased by 11 and 12 percent to $796 million and 7,074 employees, respectively. The industry projects fuel cells for portable electronic devices will achieve significant market penetration by 2009.

By proposing to authorize their carriage by airline passengers and crew, the regulatory changes addressed in this rulemaking will lift barriers to the commercialization and distribution of fuel cell cartridges for use in personal electronic equipment. The costs associated with this rulemaking proposal primarily relate to the costs for testing fuel cell designs in accordance with the IEC consensus standard. We expect most fuel cell manufacturers will voluntarily comply with the IEC standard as a positive marketing tool

because it addresses broad consumer safety issues and provides independent assurance that fuel cells will meet a rigorous safety standard. Thus, the incremental costs imposed by this NPRM are expected to be minimal.

C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria set forth in Executive Order 13132 (''Federalism''). Any rule resulting from this rulemaking will preempt State, local, and Indian tribe requirements but will not have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous materials transportation law (49 U.S.C. 5125(b)) expressly preempts State, local, and Indian tribe requirements on certain covered subjects, as follows:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials, and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; and

(5) The design, manufacture, fabrication, inspection, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule addresses covered subject items (1), (2), (3), and (5) above and would preempt State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. Pursuant to 49 U.S.C. 5125(b)(2), we would deem federal preemption effective upon the effective date of the final rule. We are proposing to make the final rule effective approximately 90 days after it is published in the **Federal Register**.

D. Executive Order 13175

This proposed rule was analyzed in accordance with the principles and criteria set forth in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to review regulations to assess their impact on small entities, unless the agency determines the rule is not expected to have a significant impact on a substantial number of small entities. The proposed rule will relax regulatory barriers to the transportation of fuel cells used in personal electronic devices and, accordingly, is expected to have a positive impact on small businesses that manufacture, distribute, transport, or use such items. As indicated above, we expect the incremental costs imposed by this NPRM to be minimal. Therefore, I certify that, if adopted, the proposals in this NPRM will not have a significant impact on a substantial number of small entities.

This proposed rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This NPRM does not include new information collection or recordkeeping requirements.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $120.7 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act (NEPA), §§ 4321–4375, requires that federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations order federal agencies to conduct an environmental review considering (1) the need for the proposed action, (2) alternatives to the proposed action, (3) probable environmental impacts of the proposed action and alternatives, and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

Purpose and Need

Fuel cells are an emerging energy technology designed to replace, augment, or recharge existing battery sources. The fuel cell designs currently under development are powered by one of a variety of hazardous materials fuels, including methanol and other types of flammable liquids, butane flammable gas, dangerous when wet hydrogen in metal hydride, and corrosive liquids containing formic acid or borohydride materials.

The HMR and the ICAO Technical Instructions already include provisions for transporting fuel cell systems and fuel cell cartridges containing flammable liquid as cargo on board aircraft. See 49 CFR 173.230, and Special Provision 146 of the HMR, and Packing Instruction 313 of the 2007–2008 edition of the ICAO Technical Instructions. In addition, the ICAO also adopted (in Section 8:1.1.2(r)) provisions that will permit these devices to be fueled by formic acid or butane, and transported in carry-on baggage on board passenger-carrying aircraft under certain conditions. This rulemaking proposes to harmonize the HMR with these additional ICAO requirements. To limit both the safety and environmental consequences should an incident occur, this rulemaking also proposes restrictions on the fuel cell system configurations and limits on the amount of hazardous material contained in each fuel cell cartridge. There are no significant environmental impacts associated with this NPRM.

Alternatives

The alternatives PHMSA is considering are as follows:

No action—If no action is taken, passengers would not be permitted to

transport personal electronic devices powered by fuel cell technology in carry-on baggage on domestic flights. The industry views such authorization as key to continued development and use of this technology. Without explicit action to permit airline passengers to carry fuel cell powered devices, technological development could well be delayed. This action is not recommended.

Actions Proposed in this NPRM—The actions proposed in this NPRM would harmonize the HMR requirements for fuel cells with those prescribed in the international regulations. These proposed amendments are intended to update, clarify, and provide relief from certain existing regulatory requirements to promote safer transportation practices, finalize outstanding petitions for rulemaking, facilitate international commerce, and make the regulations easier to understand. This action is recommended.

To Regulate All Fuel Cells in the Manner Prescribed in the IEC Standard—In addition to the materials covered by the proposed rule, the IEC standard covers fuel cells containing solid Division 4.3 (dangerous when wet) materials. As explained above, this design was not included in the ICAO standard to which we are proposing to harmonize in this rulemaking. PHMSA believes those fuel cell designs that have not been included in the ICAO standards warrant further safety review and that adopting a standard inconsistent with the international standard cannot be justified at this time.

Analysis of Environmental Impacts

We regulate hazardous materials transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, or loading, unloading, or handling problems. The ecosystems that could be affected by a release include air, water, soil, and ecological resources (for example, wildlife habitats). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean up of the accident scene. Most hazardous materials are not transported in quantities sufficient to cause significant, long-term environmental damage if they are released.

The hazardous material regulatory system is a risk-management system that is prevention oriented and focused on identifying a hazard and reducing the probability and quantity of a hazardous material release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards through use of the hazard class, packing group, and proper shipping name on the shipping paper, labels and markings on packages, and placards on transport vehicles. Thus the shipping paper, labels, markings, and placards communicate the most significant findings of the shipper's hazard analysis. Excluding compressed gases, radioactive materials, and explosives, which all have their own packaging strength criteria, a hazardous material is assigned to one of three packing groups based upon its degree of hazard—from a high hazard, Packing Group I, to a low hazard, Packing Group III material—except gases and certain other materials with high integrity packagings. The HMR are designed to ensure the quality, damage resistance, and performance standards of the packaging for each hazardous material are appropriate for the hazards of the material transported.

We have reviewed the risks associated with transporting fuel cell systems and cartridges. The amount of hazardous material contained within the fuel cells or cartridges to which this NPRM applies is minimal, limited to 200 mL or 200 g by this proposal. Even if a large number of these devices were compromised and their hazardous materials contents released, the environmental impact of the release would not be significant. We have determined there will be no significant environmental impacts associated with this proposed rule.

Consultation and Public Comment

As discussed above, PHMSA consulted with the IEC and many companies representing the fuel cell industry here and abroad to prepare for U.N. Dangerous Goods Council meetings on these devices. PHMSA also participated in the technical review of papers prepared by these companies explaining the potential risks and measures taken in the IEC standard to reduce risks for each fuel the IEC standard states may be present in a fuel cell. In addition, also as discussed earlier, PHMSA has consulted extensively with the U.S. Fuel Council, Medis Technologies, Ltd., and Millenium Cell, Inc., in response to their petitions for rulemaking, numbered P–1475 and P–1483, to permit passengers and crew to transport in carry-on baggage on board passenger aircraft fuel cells containing flammable liquid, formic acid, butane, and Class 8 borohydride materials for use in portable electronic devices. PHMSA has also received a letter signed by approximately 18 companies supporting the proposed regulation of fuel cells in the HMR.

We invite interested persons to submit comments on the potential environmental, safety, and other impacts of the proposals subject to federal regulation in this NPRM.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), which may also be found at *http://dms.dot.gov,* and on and after September 28, 2007, may be found at *http://www.regulations.gov.*

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Incorporation by reference, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR Chapter I as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 Note); Pub. L. 104–134 section 31001.

2. In § 171.7, in paragraph (a)(3), in the Table, an entry for the International Electrotechnical Commission is added in appropriate alphabetical order to read as follows:

§ 171.7 Reference material.

* * * * *

(a) * * *

(3) * * *

Source and name of material	49 CFR reference
* * * * * * *	
International Electrotechnical Commission (IEC) 3, rue de Varembé, P.O. Box 131, CH—1211, GENEVA 20, Switzerland:	
Fuel cell technologies—Part 6–1: Micro fuel cell power systems—Safety, IEC/PAS 62282–6–1 First Edition, with Technical Corrigendum 1, 2006	§ 175.10
* * * * * * *	

* * * * *

2. In § 171.8, two new definitions for ''fuel cell'' and ''fuel cell cartridge'' are added in alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Fuel cell means an electrochemical device that converts the energy of the chemical reaction between a fuel, such as hydrogen or hydrogen rich gases, alcohols, hydrocarbons, and an oxidant, such as air or oxygen, to direct current (d.c.) power, heat, and other reaction products.

Fuel cell cartridge or *Fuel cartridge* means a removable article that contains and supplies fuel to the micro fuel cell power unit or internal reservoir, not to be refilled by the user.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

4. In § 173.230, paragraph (a) is revised and new paragraph (d) is added, to read as follows:

§ 173.230 Fuel cell cartridges containing flammable liquids.

(a) A fuel cell cartridge must be designed and constructed to prevent the fuel it contains from leaking during normal conditions of transportation and be free of electric charge generating components.

* * * * *

(d) Fuel cells intended for transportation in carry-on baggage on board passenger aircraft must also comply with the applicable provisions prescribed in § 175.10 of this subchapter.

PART 175—CARRIAGE BY AIRCRAFT

5. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

6. In § 175.10, paragraph (a)(18) is added to read as follows:

§ 175.10 Exceptions for passengers, crew members, and air operators.

(a) * * *

(18) Portable electronic devices (for example, cameras, cellular phones, laptop computers, and camcorders) powered by fuel cell systems, and not more than two spare fuel cartridges per passenger or crew member, when transported in carry-on baggage by aircraft under the following conditions:

(i) Fuel cell cartridges may contain only Class 3 flammable liquids (including methanol), Class 8 formic acid, Class 8 borohydride materials, or Division 2.1 butane;

(ii) The maximum quantity of fuel in any fuel cell cartridge may not exceed:

(A) 200 mL (6.76 ounces) for liquids,

(B) 120 mL (4 fluid ounces) for liquefied gases in non-metallic fuel cell cartridges, or 200 mL for metal fuel cell cartridges;

(C) 200 g (7 ounces) for solids;

(iii) No more than two spare fuel cell cartridges may be carried by a passenger;

(iv) Fuel cell systems containing fuel and fuel cell cartridges including spare cartridges are permitted in carry-on baggage only;

(v) Fuel cell cartridges may not be refillable by the user. Refueling of fuel cell systems is not permitted except that the installation of a spare cartridge is allowed. Fuel cell cartridges that are used to refill fuel cell systems but that are not designed or intended to remain installed (fuel cell refills) in a portable electronic device are not permitted;

(vi) Fuel cell systems and fuel cell cartridges must conform to IEC/PAS 62282–6–1 (IBR; see § 171.7 of this subchapter);

(vii) Interaction between fuel cells and integrated batteries in a device must conform to IEC/PAS 62282–6–1. Fuel cell systems for which the sole function is to charge a battery in the device are not permitted;

(viii) Fuel cell systems must be of a type that will not charge batteries when the portable electronic device is not in use; and

(ix) Each fuel cell cartridge and system that conforms to the requirements in this paragraph (a)(18) must be durably marked by the manufacturer with the wording: ''APPROVED FOR CARRIAGE IN AIRCRAFT CABIN ONLY'' to certify that the fuel cell cartridge or system meets the specifications in IEC/PAS 62282–6–1 and with the maximum quantity and type of fuel contained in the cartridge or system.

* * * * *

Issued in Washington, DC, on September 14, 2007, under the authority delegated in 49 CFR part 106.

Theodore L. Willke,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. E7–18532 Filed 9–19–07; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AV19

Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding and Proposed Rule To List the Polar Bear (Ursus Maritimus) as Threatened Throughout Its Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopening of comment period; notice of availability of new information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of nine new United States Geological Survey (USGS) reports produced for the Service to provide current data and modeling outputs relevant to the final determination of whether the polar bear (*Ursus maritimus*) qualifies for listing under the Endangered Species Act of 1973, as amended (Act). We intend to take these reports into consideration as we make our final listing determination on the polar bear. We also are reopening the public comment period on the January 9, 2007, proposed rule to list the polar bear as threatened throughout its range under the Act (72 FR 1064). We are reopening the comment period for an additional 15 days to allow interested parties to comment on the nine USGS reports listed below. The comment period is being limited to 15 days because of the statutory deadline, which requires a final listing determination within one year of publication of the proposed rule, unless an extension of up to six months is granted due to substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination.

Please note that comments previously submitted should not be resubmitted. This comment period is open only for comments on the nine USGS reports listed below. Comments submitted during the prior comment period have been incorporated into the public record and will be fully considered during preparation of our final determination.

DATES: We will accept public comments until October 5, 2007.

ADDRESSES: You may submit comments and materials to us by any one of the following methods:

(1) You may mail or hand-deliver written comments and information to the Supervisor, U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, AK 99503.

(2) You may send comments by electronic mail (e-mail) to: *Polar_Bear_Finding@fws.gov.* For instructions on how to file comments electronically, see the ''Public Comments Solicited'' section below. In the event that our Internet connection is not functional, please submit your comments by one of the alternate methods listed in this section.

(3) You may submit your comments via the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments.

For information on obtaining copies of the nine USGS reports, see the ''Obtaining Copies of the Nine USGS reports'' section below.

FOR FURTHER INFORMATION CONTACT: Rosa Meehan, Marine Mammals Management Office (see **ADDRESSES**) (telephone 907–786–3800). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: On January 9, 2007 (72 FR 1064), the Service published a 12-month petition finding and proposed rule to list the polar bear (*Ursus maritimus*) as threatened throughout its range under the Act. The document announced a 3-month public comment period on the proposed rule, which closed on April 9, 2007. We also held three public hearings during the proposed rule's comment period, as announced in the February 15, 2007, **Federal Register** (72 FR 7381).

On September 7, 2007, the Service received nine reports prepared by the USGS that provide new data and modeling outputs relevant to the final determination of whether the polar bear qualifies for listing as threatened or endangered under the Act. These reports are:

(1) Polar Bear Population Status in the Northern Beaufort Sea by Stirling *et al.*

(2) Polar Bear Population Status in Southern Hudson Bay Canada by Obbard *et al.*

(3) Polar Bears in the Southern Beaufort Sea I: Survival and Breeding in Relation to Sea Ice Conditions, 2001–2006 by Regehr *et al.*

(4) Polar Bears in the Southern Beaufort Sea II: Demography and Population Growth in Relation to Sea Ice Conditions by Hunter *et al.*

(5) Polar Bears in the Southern Beaufort Sea III: Stature, Mass, and Cub Recruitment in Relationship to Time and Sea Ice Extent Between 1982 and 2006 by Rode *et al.*

(6) Uncertainty in Climate Model Predictions of Arctic Sea Ice Decline: An Evaluation Relevant to Polar Bears by DeWeaver.

(7) Predicting the Future Distribution of Polar Bear Habitat in the Polar Basin from Resource Selection Functions Applied to 21st Century General Circulation Model Projections of Sea Ice by Durner *et al.*

(8) Predicting Movements of Female Polar Bears between Summer Sea Ice Foraging Habitats and Terrestrial Denning Habitats of Alaska in the 21st Century: Proposed Methodology and Pilot Assessment by Bergen *et al.*

(9) Forecasting the Range-wide Status of Polar Bears at Selected Times in the 21st Century by Amstrup *et al.*

We are notifying the public of the availability of these reports and our intent to consider them in making our final listing determination. We also are reopening the comment period for 15 days to provide the public the opportunity to provide comments or information on these reports. We are asking for public comments on these reports and a review of the extent to which they add to the knowledge base for making the final decision.

Obtaining Copies of the Nine USGS Reports

You may obtain copies of any of the nine USGS reports:

- By mail from the U.S. Department of the Interior, United States Geological Survey, Office of Communication, 119 National Center, Reston, VA 20192;
- By calling USGS Public Affairs at (703) 648–4460;
- By visiting the USGS Web site at *http://www.usgs.gov/newsroom/special/polar_bears/*; or
- Via link to the USGS Web site from the Service's Web site: *http://www.fws.gov/.*

Copies of the reports are also available for public inspection, by appointment during normal business hours, at the U.S. Fish and Wildlife Service, Marine Mammals Management Office (see **ADDRESSES**).

Public Comments Solicited

Comments and information submitted during the initial comment period on the January 9, 2007 (72 FR 1064), proposed rule should not be resubmitted, as this comment period is open only for comments on the nine USGS reports listed above. Our final determination of whether the polar bear qualifies as threatened or endangered under the Act will take into consideration all comments and information we receive during both comment periods.

You may submit your comments and any materials concerning the above reports by any one of several methods (see **ADDRESSES**). If you use e-mail to submit your comments, please include ''Attn: Polar Bear Finding'' in your e-mail subject header, preferably with your name and return address in the body of your message.

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public view your personal identifying information, we

cannot guarantee that we will be able to do so.

Author

The primary author of this notice is staff of the U.S. Fish and Wildlife Service.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 13, 2007.

H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 07–4652 Filed 9–17–07; 11:03 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070627217–7218–01]

RIN 0648–AV70

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Region Standardized Bycatch Reporting Methodology Omnibus Amendment

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: NMFS extends for 4 days the comment period on the proposed rule to implement the Standardized Bycatch Reporting Methodology (SBRM) Omnibus Amendment (SBRM Amendment) to the Fishery Management Plans (FMPs) of the Northeast Region, developed by the Mid-Atlantic and New England Fishery Management Councils (Councils).

DATES: The deadline for written comments on the August 21, 2007 (72 FR 46588), proposed rule is extended from September 20, 2007, to no later than 5 p.m. on September 24, 2007.

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

- E-mail: *SBRM.Amend.PR@noaa.gov*. Include in the subject line the following identifier: ''Comments on the Proposed Rule to implement the SBRM Omnibus Amendment.''
- Federal e-rulemaking portal: *http:/ www.regulations.gov*.
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on the Proposed Rule to implement the SBRM Omnibus Amendment.''
- Fax: (978) 281–9135

Copies of the SBRM Amendment, and of the draft Environmental Assessment and preliminary Regulatory Impact Review (EA/RIR), are available from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790; and from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The EA/RIR is also accessible via the Internet at *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Pentony, Senior Fishery Policy Analyst, 978–281–9283.

SUPPLEMENTARY INFORMATION:

Background

Section 303(a)(11) of the Magnuson-Stevens Act requires that all FMPs ''establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery.'' In 2004, several conservation organizations challenged the approval of two major amendments to Northeast Region FMPs. In ruling on these suits, the U.S. District Court for the District of Columbia found that the FMPs did not clearly establish an SBRM as required under the relevant section of the Magnuson-Stevens Act and remanded the amendments back to the agency to fully develop and establish the required SBRM. In particular, the Court found that the amendments (1) failed to fully evaluate reporting methodologies to assess bycatch, (2) did not mandate an SBRM, and (3) failed to respond to potentially important scientific evidence.

In response, the Councils, working closely with NMFS, undertook development of a remedy that would address all Northeast Region FMPs. The Councils took final action to adopt the SBRM Amendment at their meetings in June 2007, and submitted the amendment for review shortly thereafter. This amendment covers 13 FMPs, 39 managed species, and 14 types of fishing gear. The purpose of the amendment is to: Explain the methods and processes by which bycatch is currently monitored and assessed for Northeast Region fisheries; determine whether these methods and processes need to be modified and/or supplemented; establish standards of precision for bycatch estimation for all Northeast Region fisheries; and, thereby, document the SBRM established for all fisheries managed through the FMPs of the Northeast Region. The amendment also responds to the ''potentially important scientific evidence'' cited by the Court in the two decisions referenced above.

On July 26, 3007 (72 FR 41047), NMFS published a notice of availability that requested comments on the SBRM Amendment and draft Environmental Assessment. The comment period on the notice of availability closes on September 24, 2007. On August 21, 2007 (72 FR 46588), NMFS published a proposed rule that requested comments on the regulations to implement the SBRM Amendment. The comment period on the proposed rule was scheduled to close on September 20, 2007. In order to provide the maximum opportunity for the public to review and provide comments on the proposed rule to implement the SBRM Amendment, NMFS is extending the comment period on the proposed rule to 5 p.m. on September 24, 2007. With this extension, both comment periods will end at the same time.

Dated: September 17, 2007.

Samuel D. Rauch III,

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

[FR Doc. E7–18590 Filed 9–19–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 182

Thursday, September 20, 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

Food Safety and Inspection Service

[Docket No. FSIS–2007–0028]

Notice of Request for a Revision of a Currently Approved Information Collection (Application for Inspection, Accreditation of Laboratories, and Exemptions)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request a revision of an approved information collection concerning the regulatory requirements for application for inspection, accreditation of laboratories, and exemptions because of revised estimates that support a finding of fewer total burden hours.

DATES: Comments on this notice must be received on or before November 19, 2007.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

- *Mail, including floppy disks or CD-ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue, SW., Room 2534 South Building, Washington, DC 20250.
- *Electronic mail:* *fsis.regulationscomments@fsis.usda.gov*.
- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulation.gov* and in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select FDMS Docket Number FSIS–2007–0028 to submit or view public comments and to view supporting and related materials available electronically.

All submissions received by mail or electronic mail must include the Agency name and docket number. All comments submitted in response to this document, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments will also be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/regulations_directives_&_notices/index.asp*. Individuals who do not wish FSIS to post their personal contact information—mailing address, e-mail address, and telephone number—on the Internet may leave the information off their comments.

FOR FURTHER INFORMATION CONTACT: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 3532 South Building, Washington, DC 20250, (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Application for Inspection, Accreditation of Laboratories, and Exemptions.

OMB Number: 0583–0082.

Expiration Date of Approval: 12/31/2007.

Type of Request: Revision of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). FSIS protects the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting a revision of an approved information collection addressing paperwork requirements specified in the regulations relating to the application for inspection, accreditation of laboratories, and exemptions.

FSIS requires meat and poultry establishments and import facilities to apply for a grant of inspection before they can receive Federal inspection (9 CFR 304.1 & 381.17). FSIS also requires plants that wish to receive voluntary inspection to apply for inspection (9 CFR 350.5, 351.4, 352.3, & 362.3). Establishments that wish to export or import product must also submit certain documents to the Agency.

The FMIA (21 U.S.C. 642), the PPIA (21 U.S.C. 460(b)), and the EPIA (21 U.S.C. 1040) require certain parties to keep records that fully and correctly disclose all transactions involved in their businesses related to relevant animal carcasses and parts and egg products.

FSIS requires accredited non-Federal analytical laboratories to maintain certain paperwork and records (9 CFR 319.10 & 590.580). The Agency uses this collected information to ensure that meat and poultry establishments and egg products plants provide safe, wholesome, and unadulterated product, and that non-Federal laboratories act in accordance with FSIS regulations.

In addition, FSIS also collects information to ensure that meat and poultry establishments exempted from Agency inspection do not commingle inspected and non-inspected meat and poultry products (9 CFR 303.1(b)(3) & 381.10(a)(1)), and that firms qualifying for a retail store exemption who have violated the provision of that exemption are no longer in violation (9 CFR 303.1(d)(3) & 381.10(d)(3)).

The Agency is revising the information collection based on a revised estimate of the number of respondents, which support a finding of fewer total burden hours (113,048) than there are in the approved information collection (114,583).

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take respondents an average of .034 hours per response.

Respondents: Official meat and poultry establishments, official egg plants, and foreign establishments.

Estimated No. of Respondents: 24,622.

Estimated No. of Annual Responses per Respondent: 136.

Estimated Total Annual Burden on Respondents: 113,048 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250, (202)720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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 establishments, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2007_Notices_Index/index.asp*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The Update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on: September 17, 2007.

Alfred V. Almanza,

Administrator.

[FR Doc. E7–18574 Filed 9–19–07; 8:45 am]

BILLING CODE 3410–DM–P

PATENT AND TRADEMARK OFFICE

Electronic Response to Office Action and Preliminary Amendment Forms

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 19, 2007.

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

- *E-mail: Susan.Fawcett@uspto.gov.* Include ''0651–0050 comment'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Sharon Marsh, Deputy Commissioner for Trademark Examination Policy, Office of the Commissioner for Trademarks, United States Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313–1451, by telephone at 571–272–8900, or by e-mail at *Sharon.Marsh@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is required by the Trademark Act, 15 U.S.C. Section 1051, *et seq.*, which provides for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register their marks with the United States Patent and Trademark Office (USPTO). In some cases, the USPTO may issue an Office Action to an applicant in order to request additional information that is required before a mark can be registered. The USPTO may also issue an Office Action to advise an applicant that a mark cannot be registered due to one or more provisions of the Trademark Act. Applicants may reply to these Office Actions by providing the required information or by putting forth legal arguments as to why the refusal of registration should be withdrawn.

Applicants may also supplement their applications by providing additional information voluntarily. When such information is provided before the USPTO has reviewed the application, the applicant may submit the additional information in the form of a Preliminary Amendment.

The forms in this collection are available in electronic format through the Trademark Electronic Application System (TEAS), which may be accessed on the USPTO Web site. The USPTO is proposing to add two forms to this information collection, Post Publication Amendment (PTO–1711) and Response to Suspension Inquiry or Letter of Suspension (PTO–1822). Applicants may file a Post Publication Amendment in order to submit a proposed amendment to an application that has already been approved for publication by the examining attorney. If an applicant receives a Suspension Inquiry or Letter of Suspension from the USPTO, the applicant may use the proposed response form to file a reply. Applicants may submit the two proposed new forms to the USPTO electronically through TEAS or submit the required information for the amendment or response to the USPTO on paper. The USPTO does not provide official forms for these paper submissions.

II. Method of Collection

By mail, facsimile, hand delivery, or electronic transmission.

III. Data

OMB Number: 0651–0050.

Form Number(s): PTO–1771, PTO–1882, PTO–1930, PTO–1957 and PTO–1966.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 158,300 responses per year, including 1,800 responses per year for Post Publication Amendments and 5,600 responses per year for the Response to Suspension Inquiry or Letter of Suspension.

Estimated Time per Response: The USPTO estimates that the public will require approximately 10 to 18 minutes (0.17 to 0.30 hours) to supply the information requested in this collection. Completion times may vary, depending upon the nature and amount of information requested in a particular Office Action.

Estimated Total Annual Respondent Burden Hours: 27,240 hours, including 495 hours for Post Publication Amendments and 1,092 hours for the Response to Suspension Inquiry or Letter of Suspension.

Estimated Total Annual Respondent Cost Burden: $8,280,960. The USPTO expects that the information in this collection will primarily be prepared by attorneys, though some submissions may be prepared by *pro se* applicants. Using the professional hourly rate of $304 for associate attorneys in private firms, the USPTO estimates that the respondent cost burden for submitting the information in this collection will be approximately $8,280,960 per year, including $482,448 for the proposed forms.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Post Publication Amendment (TEAS)	15	900	225
Post Publication Amendment (paper)	18	900	270
Response to Suspension Inquiry or Letter of Suspension (TEAS)	10	2,800	476
Response to Suspension Inquiry or Letter of Suspension (paper)	13	2,800	616
Total		7,400	1,587

Estimated Total Annual Non-hour Respondent Cost Burden: $1,517. There are no capital start-up costs, maintenance costs, or filing fees associated with this information collection. However, customers may incur postage costs when submitting a Post Publication Amendment or Response to Suspension Inquiry or Letter of Suspension to the USPTO by mail. The USPTO estimates that it may receive up to 3,700 mailed submissions per year for these items with an estimated postage cost of 41 cents per response. Therefore, this collection has an annual (non-hour) cost of approximately $1,517 per year in the form of postage costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 12, 2007.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E7–18567 Filed 9–19–07; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m., Thursday, October 4, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–4684 Filed 9–18–07; 10:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, October 5, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–4685 Filed 9–18–07; 10:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, October 12, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–4686 Filed 9–18–07; 10:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m. Friday, October 19, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–4687 Filed 9–18–07; 10:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m. Friday, October 26, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–4688 Filed 9–18–07; 10:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Task Force on the Future of Military Health Care; Sunshine Act Meeting

AGENCY: Department of Defense, Office of the Assistant Secretary of Defense (Health Affairs); DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federl Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) and 41 Code of Federal Regulations (CFR) §§ 102–3.140 through 160, the Department of Defense announces the following committee meeting:

Name of Committee: Department of Defense Task Force on the Future of Military Health Care, a duly established subcommittee of the Defense Health Board.

Date of Meeting: October 3, 2007.

Time of Meeting: 9 a.m. to 3 p.m.

Place of Meeting: National Transportation Safety Board Conference Center, 429 L'Enfant Plaza, Washington, DC 20594.

Purpose of Meeting: To obtain, review, and evaluate information related to the Task Force's congressionally-directed mission to examine matters relating to the future of military health care. The Task Force members will receive briefings on topics related to the delivery of military health care during the public meeting.

Agenda: Discussion topics will include: Military and Civilian Personnel Mix; Managing Health Care Needs of Medicare-Eligible Beneficiaries.

Prior to the public meeting the Task Force will conduct a Preparatory Work Meeting from 8 a.m.–8:50 a.m. to solely analyze relevant issues and facts in preparation for the Task Force's next public meeting. In addition, the task Force, following its public meeting, will conduct an addditional Preparatory Work Meeting from 3:10 p.m. to 4:10 p.m. to analyze relevant issues and facts in preparation for the Task Force's next public meeting. Both Preparatory Meetings will be held at the National Transportation Safety Board Conference Center, and pursuant to 41 Code of Federal Regulations, Part 102–3.160(a), both Preparatory Work Meetings are closed to the public.

Additional information and meeting registration is available online at the Task Force Web site: *http://www.DoDfuturehealthcare.net*

FOR FURTHER INFORMATION CONTACT: Colonel Christine Bader, Executive Secretary, Department of Defense Task Force on the Future of Military Health Care, TMA/Code: DHS, Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, Virginia 22041–3206, (703) 681–3279, ext. 109 *(christine.bader@ha.osd.mil).*

SUPPLEMENTARY INFORMATION: Open sessions of the meeting will be limited by space accommodations. Any interested person may attend; however, seating is limited to the space available at the National Transportation Safety Board Conference Center. Individuals or organizations wishing to submit written comments for consideration by the Task Force should provide their comments in an electronic (PDF Format) document through the Task Force Web site *(http://www.DoDfuturehealthcare.net)* at the ''Contact Us'' page, no later than five (5) business days prior to the scheduled meeting.

Dated: September 17, 2007.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4689 Filed 9–18–07; 11:18 am]

BILLING CODE 5001–06–M

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting.

DATE AND TIME: Thursday, October 4, 2007, 10 a.m.–1 p.m.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave., NW., Suite 150, Washington, DC 20005 (Metro Stop: Metro Center).

AGENDA: Commissioners will receive the following presentations: Perspectives from state officials on how EAC can use its regulatory authority under the National Voter Registration Act (NVRA) to address changes in voter registration procedures; Commissioners will receive updates on the next iteration of the Voluntary Voting System Guidelines (VVSG) and a report on a recommendation from the National Voluntary Laboratory Accreditation Program (NVLAP); Commissioners will discuss other administrative matters.

This meeting will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 07–4701 Filed 9–18–07; 2:46 pm]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Notice of Interim Approval

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of Rate Order.

SUMMARY: The Deputy Secretary of Energy confirmed and approved, on an interim basis, Rate Schedules SOCO–1–

C, SOCO–2–C, SOCO–3–C, SOCO–4–C, ALA–1–L, MISS–1–L, Duke–1–C, Duke–2–C, Duke–3–C, Duke–4–C, Santee–1–C, Santee–2–C, Santee–3–C, Santee–4–C, SCE&G–1–C, SCE&G–2–C, SCE&G–3–C, SCE&G–4–C, Replacement–1, Pump–1–A, Pump–2, and Regulation–1. The new rates take effect on October 1, 2007, and were approved on an interim basis through September 30, 2012. The new rates are subject to confirmation and approval on a final basis by the Federal Energy Regulatory Commission.

DATES: Approval of the rate schedule on an interim basis is effective October 1, 2007 through September 30, 2012.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, (706)–213–3800.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission, by Order issued November 3, 2004, in Docket No. EF03–3011–000, confirmed and approved Wholesale Power Rate Schedules SOCO–1–B, SOCO–2–B, SOCO–3–B, SOCO–4–B, ALA–1–K, MISS–1–K, Duke–1–B, Duke–2–B, Duke–3–B, Duke–4–B, Santee–1–B, Santee–2–B, Santee–3–B, Santee–4–B, SCE&G–1–B, SCE&G–2–B, SCE&G–3–B, SCE&G–4–B, Regulation–1, Replacement–1, Pump–1–A, and Pump–2. Rate schedules SOCO–1–C, SOCO–2–C, SOCO–3–C, SOCO–4–C, ALA–1–L, MISS–1–L, Duke–1–C, Duke–2–C, Duke–3–C, Duke–4–C, Santee–1–C, Santee–2–C, Santee-3–C, Santee–4–C, SCE&G–1–C, SCE&G–2–C, SCE&G–3–C, SCE&G–4–C, Replacement–1, Pump–1–A, Pump–2 and Regulation–1 replace these schedules.

Dated: September 11, 2007.

Clay Sell,

Deputy Secretary of Energy.

Department of Energy

Deputy Secretary

In the Matter of: Southeastern Power Administration B Georgia-Alabama-South Carolina Rates; Rate Order No. SEPA–48; Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), the Secretary of Energy delegated to Southeastern's Administrator the authority to develop power and transmission rates, delegated to the Under Secretary of Energy the authority to confirm, approve, and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve and place into effect on a final basis or to disapprove rates developed by the Administrator under the delegation. On December 6, 2001, the Secretary of Energy issued Delegation Order No. 00–037.00, granting the Deputy Secretary of Energy authority to confirm, approve, and place into effect Southeastern's rates on an interim basis. This rate order is issued by the Deputy Secretary pursuant to said notice.

Background

Power from the Georgia-Alabama-South Carolina System is presently sold under Wholesale Power Rate Schedules SOCO–1–B, SOCO–2–B, SOCO–3–B, SOCO–4–B, ALA–1–K, MISS–1–K, Duke–1–B, Duke–2–B, Duke–3–B, Duke–4–B, Santee–1–B, Santee–2–B, Santee–3–B, Santee–4–B, SCE&G–1–B, SCE&G–2–B, SCE&G–3–B, SCE&G–4–B, Regulation–1, Replacement–1, Pump–1–A, and Pump–2. These rate schedules were approved by the FERC on November 3, 2004, for a period ending September 30, 2007 (109 FERC ¶ 61,133).

Public Notice and Comment

Notice of proposed rate adjustment was published in the **Federal Register** April 4, 2007 (72 FR 16345). The notice advised interested parties of a proposed rate increase of about eight and one-half percent (8.5%). A public information and comment forum was scheduled for May 10, 2007. Subsequent to the public information and comment forum, the proposed rates were revised. With the revisions, the proposed rate adjustment is an increase of about seven percent (7%). Written comments were accepted on or before July 3, 2007. Written comments were received from one source, the Southeastern Federal Power Customers (SeFPC), pursuant to this notice.

The following comments were received during the comment period. Southeastern's response follows each comment.

Comment 1: Customers are concerned with a 28% increase in O&M expense from the previous study, which is largely responsible for the overall increase in the rates.

Response 1: Estimates of future Corps Operations & Maintenance (O&M) Expense were provided by the Corps of Engineers to the O&M Committee of the SeFPC in April of 2006. Southeastern believes that these are the best estimates available. Southeastern shares the customer's concerns with the rate of increase of Corps O&M expense and will, in conjunction with the O&M Committee of the SeFPC, monitor and review this expense.

Comment 2: The high level for 2006 may be attributable to large increases in spending at the Carters and Russell projects that will not be repeated in future years.

Response 2: Information provided by the Corps of Engineers suggests costs at the Carters and Russell projects may have been higher in Fiscal Year 2006 due to some nonrecurring work. Nevertheless, Southeastern believes these estimates are the best available for the purposes of this rate filing. Southeastern will, in conjunction with the O&M Committee of the SeFPC, monitor and review O&M Expense for the Georgia-Alabama-South Carolina System Projects.

Comment 3: The SeFPC [asks] SEPA to review the proposed increase for O&M and recent {events} at the Carters and Russell project to determine if any of these O&M expenses should be capitalized. If costs have been included as O&M expenses which should more properly be capitalized, the SeFPC would request that SEPA make the appropriate reductions in O&M expenses and commensurate increases in the capital project expenditures.

Response 3: The Corps of Engineers prepares its financial statements in accordance with Corps Directives. Southeastern has reviewed the Corps' cost reporting and has not discovered any material items that the Corps expensed and Southeastern believes should be capitalized. Southeastern will work with the Corps to ensure appropriate reporting of all expenditures.

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in July, 2007, for the Georgia-Alabama-South Carolina System, shows that with the proposed rates, all system power costs are paid within the 50-year repayment period required by existing law and DOE Order RA 6120.2. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers

consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required. (10 CFR Part 1021, Subpart D, App. B4.3)

Availability of Information

Information regarding these rates, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635–6711.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to FERC for confirmation and approval on a final basis, ending no later than September 30, 2012.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 2007, attached Wholesale Power Rate Schedules SOCO–1–C, SOCO–2–C, SOCO–3–C, SOCO–4–C, ALA–1–L, MISS–1–L, Duke–1–C, Duke–2–C, Duke–3–C, Duke–4–C, Santee–1–C, Santee–2–C, Santee–3–C, Santee–4–C, SCE&G–1–C, SCE&G–2–C, SCE&G–3–C, SCE&G–4–C, Replacement–1, Pump–1–A, Pump–2 and Regulation–1. The rate schedules shall remain in effect on an interim basis through September 30, 2012, unless such period is extended or until FERC confirms and approves them or substitute rate schedules on a final basis.

Dated: September 11, 2007.

Clay Sell,

Deputy Secretary of Energy.

Wholesale Power Rate Schedule SOCO–1–C

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be transmitted and scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.70 per kilowatt of total contract demand per month.

Energy Charge: 9.32 mills per kilowatt-hour.

Generation Services: $0.12 per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $2.17 per kilowatt of total contract demand per month as of February 2007 is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the Transmission and Distribution Charges paid by the Government. The initial monthly transmission demand charge shall be determined by multiplying the Government's Load Ratio Share times one twelfth (1/12) of Southern Companies' Annual Transmission Costs as specified in Schedule 1 of the Government-Company Contract. The transmission charges are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving Southern Companies' Open Access Transmission Tariff (OATT). The distribution charges may be modified by FERC pursuant to application by the Company under Section 205 of the Federal Power Act or the Government under Section 206 of the Federal Power Act.

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Scheduling, System Control and Dispatch Service: $0.0806 per kilowatt of total contract demand per month.

Reactive Supply and Voltage Control from Generation Sources Service: $0.11 per kilowatt of total contract demand per month.

Regulation and Frequency Response Service: $0.0483 per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. As of July 2007, applicable energy losses are as follows:

Transmission facilities: 2.2%
Sub-transmission: 2.0%
Distribution Substations: 0.9%
Distribution Lines: 2.25%

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by Southern Companies under Section 205 of the Federal Power Act or SEPA under Section 206 of the Federal Power Act or otherwise.

Billing Month: The billing month for power sold under this schedule shall

end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule SOCO–2–C

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be transmitted pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.70 per kilowatt of total contract demand per month.

Energy Charge: 9.32 mills per kilowatt-hour.

Generation Services: $0.12 per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $2.17 per kilowatt of total contract demand per month as of February is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the Transmission and Distribution Charges paid by the Government. The initial monthly transmission demand charge shall be determined by multiplying the Government's Load Ratio Share times one twelfth (1/12) of Southern Companies' Annual Transmission Costs as specified in Schedule 1 of the Government-Company Contract. The transmission charges are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving Southern Companies' Open Access Transmission Tariff (OATT). The distribution charges may be modified by FERC pursuant to application by the Company under Section 205 of the Federal Power Act or the Government under Section 206 of the Federal Power Act.

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Reactive Supply and Voltage Control from Generation Sources Service: $0.11 per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. As of July 2007, applicable energy losses are as follows:

Transmission facilities: 2.2%
Sub-Transmission: 2.0%
Distribution Substations: 0.9%
Distribution Lines: 2.25%

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by Southern Companies under Section 205 of the Federal Power Act or SEPA under Section 206 of the Federal Power Act or otherwise.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule SOCO–3–C

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects (hereinafter referred to collectively as the Projects) and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.70 per kilowatt of total contract demand per month.

Energy Charge: 9.32 mills per kilowatt-hour.

Generation Services: $0.12 per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Scheduling, System Control and Dispatch Service: $0.0806 per kilowatt of total contract demand per month.

Regulation and Frequency Response Service: $0.0483 per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule SOCO–4–C

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida served through the transmission facilities of Southern Company Services, Inc. (hereinafter called the Company) or the Georgia Integrated Transmission System. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects (hereinafter referred to collectively as the Projects) and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.70 per kilowatt of total contract demand per month.

Energy Charge: 9.32 mills per kilowatt-hour.

Generation Services: $0.12 per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule ALA–1–L

Availability: This rate schedule shall be available to the Alabama Electric Cooperative, Incorporated (hereinafter called the Cooperative).

Applicability: This rate schedule shall be applicable to power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters, and Richard B. Russell Projects and sold under contract between the Cooperative and the Government. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz and shall be delivered at the Walter F. George, West Point, and Robert F. Henry Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.70 per kilowatt of total contract demand per month.

Energy Charge: 9.32 mills per kilowatt-hour.

Generation Services: $0.12 per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Southern Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Energy To Be Furnished by the Government: The Government will sell to the Cooperative and the Cooperative will purchase from the Government those quantities of energy specified by contract as available to the Cooperative for scheduling on a weekly basis.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule MISS–1–L

Availability: This rate schedule shall be available to the South Mississippi Electric Power Association (hereinafter called the Customer) to whom power may be wheeled pursuant to contracts between the Government and Alabama Electric Cooperative, Inc. (hereinafter called AEC).

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point,

Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on AEC's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.70 per kilowatt of total contract demand per month.

Energy Charge: 9.32 mills per kilowatt-hour.

Generation Services: $0.12 per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $2.25 per kilowatt of total contract demand per month as of February 2007 is presented for illustrative purposes.

This rate is subject to annual adjustment on January 1, and will be computed subject to the Appendix A attached to the Government–AEC contract.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government: The Government will sell to the Cooperative and the Cooperative will purchase from the Government those quantities of energy specified by contract as available to the Cooperative for scheduling on a weekly basis.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke–1–C

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted and scheduled pursuant to contracts between the Government and Duke Power Company (hereinafter called the Company) and the Customer. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.70 per kilowatt of total contract demand per month.

Energy Charge: 9.32 mills per kilowatt-hour.

Generation Services: $0.12 per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $0.87 per kilowatt of total contract demand per month is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the Transmission Distribution Charges paid by the Government. The initial monthly transmission demand charge shall reflect the Government's Load Ratio Share Responsibility. The Load Ratio Share shall be computed each month and shall be the ratio of the Network Load to the average of the Company's Transmission System load for each of the 12 preceding months. The Company's Transmission System Load shall be the load as determined in Section 34.3 of the Company's Pro Forma Open Access Transmission Tariff (the Tariff). The Government shall pay a monthly demand charge which shall be determined by multiplying its Load Ratio Share by 1/12 of the Annual Transmission Revenue Requirement set forth in Attachment H of the Company's Tariff.

Proceedings before FERC involving the Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses of three per cent (3%) as of February 2007). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company under Section 205 of the Federal Power Act or SEPA under Section 206 of the Federal Power Act or otherwise.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke–2–C

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted pursuant to contracts between the Government and Duke Power Company

(hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.70 per kilowatt of total contract demand per month.

Energy Charge: 9.32 mills per kilowatt-hour.

Generation Services: $0.12 per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $0.87 per kilowatt of total contract demand per month is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the Transmission Distribution Charges paid by the Government. The initial monthly transmission demand charge shall reflect the Government's Load Ratio Share Responsibility. The Load Ratio Share shall be computed each month and shall be the ratio of the Network Load to the average of the Company's Transmission System load for each of the 12 preceding months. The Company's Transmission System Load shall be the load as determined in Section 34.3 of the Company's Pro Forma Open Access Transmission Tariff (the Tariff). The Government shall pay a monthly demand charge which shall be determined by multiplying its Load Ratio Share by 1/12 of the Annual Transmission Revenue Requirement set forth in Attachment H of the Company's Tariff.

Proceedings before FERC involving the Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses of three per cent (3%) as of February 2007). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company under Section 205 of the Federal Power Act or SEPA under Section 206 of the Federal Power Act or otherwise.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke–3–C

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be scheduled pursuant to contracts between the Government and Duke Power Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Savannah River Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.70 per kilowatt of total contract demand per month.

Energy Charge: 9.32 mills per kilowatt-hour.

Generation Services: $0.12 per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke–4–C

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina served through the transmission facilities of Duke Power Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement with the Company. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an

eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Savannah River Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.70 per kilowatt of total contract demand per month.

Energy Charge: 9.32 mills per kilowatt-hour.

Generation Services: $0.12 per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Santee–1–C

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter call the Customer) in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Authority's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.70 per kilowatt of total contract demand per month.

Energy Charge: 9.32 mills per kilowatt-hour.

Generation Services: $0.12 per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Transmission: $1.06 per kilowatt of total contract demand per month as of February 2007 is presented for illustrative purposes.

The initial transmission rate is subject to annual adjustment on July 1 of each year, and will be computed subject to the formula contained in Appendix A to the Government-Authority Contract.

Proceedings before the Federal Energy Regulatory Commission involving the Authority's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses of two per cent (2%) as of February 2007). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Authority's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Service Interruption: When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule Santee–2–C

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter call the Customer) in South Carolina to whom power may be wheeled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall

preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Authority's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.70 per kilowatt of total contract demand per month.

Energy Charge: 9.32 mills per kilowatt-hour.

Generation Services: $0.12 per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Transmission: $1.06 per kilowatt of total contract demand per month as of February 2007 is presented for illustrative purposes.

The initial transmission rate is subject to annual adjustment on July 1 of each year, and will be computed subject to the formula contained in Appendix A to the Government-Authority Contract.

Proceedings before the Federal Energy Regulatory Commission involving the Authority's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses of two percent (2%) as of February 2007). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Authority's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Service Interruption: When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule Santee–3–C

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in South Carolina to whom power may be scheduled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.70 per kilowatt of total contract demand per month.

Energy Charge: 9.32 mills per kilowatt-hour.

Generation Services: $0.12 per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Service Interruption: When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule Santee–4–C

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter call the Customer) in South Carolina served through the transmission facilities of South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.70 per kilowatt of total contract demand per month.

Energy Charge: 9.32 mills per kilowatt-hour.

Generation Services: $0.12 per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Service Interruption: When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule SCE&G–1–C

Availability: This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.70 per kilowatt of total contract demand per month.

Energy Charge: 9.32 mills per kilowatt-hour.

Generation Services: $0.12 per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $0.85 per kilowatt of total contract demand per month is presented for illustrative purposes.

The initial rate will be subject to monthly adjustment and will be computed subject to Section 7 of the Government-Company contract.

Proceedings before the Federal Energy Regulatory Commission involving the Company's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government: The Government will sell to the Customer and the Customer will

purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Conditions of Service: The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule SCE&G–2–C

Availability: This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be wheeled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.70 per kilowatt of total contract demand per month.

Energy Charge: 9.32 mills per kilowatt-hour.

Generation Services: $0.12 per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $0.85 per kilowatt of total contract demand per month is presented for illustrative purposes.

The initial rate will be subject to monthly adjustment and will be computed subject to Section 7 of the Government-Company contract.

Proceedings before the Federal Energy Regulatory Commission involving the Company's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Conditions of Service: The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule SCE&G–3–C

Availability: This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be scheduled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.70 per kilowatt of total contract demand per month.

Energy Charge: 9.32 mills per kilowatt-hour.

Generation Services: $0.12 per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall

end at 12 midnight on the last day of each calendar month.

Conditions of Service: The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule SCE&G–4–C

Availability: This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina served through the transmission facilities of South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.70 per kilowatt of total contract demand per month.

Energy Charge: 9.32 mills per kilowatt-hour.

Generation Services: $0.12 per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Conditions of Service: The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule Pump–1–A

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom power is provided pursuant to contracts between the Government and the customer.

Applicability: This rate schedule shall be applicable to the sale at wholesale energy generated from pumping operations at the Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. The energy will be segregated from energy from other pumping operations.

Character of Service: The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Rate: The rate for energy sold under this rate schedule for the months specified shall be:

$$\text{EnergyRate} = \left(C_{wav} \div F_{wav}\right) \div \left(1 - L_d\right)$$

[computed to the nearest $.00001 (1/100 mill) per kwh].

(The weighted average cost of energy for pumping divided by the energy conversion factor, quantity divided by one minus losses for delivery.)

Where:

$$C_{wav} = C_{T1} \div E_{T1}$$

(The weighted average cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer for pumping divided by the total energy for pumping.)

$$C_{T1} = C_p + C_s$$

(Cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer plus the cost of energy in storage carried over from the month preceding the specified month.)

$$E_{T1} = E_p \times \left(1 - L_p\right) + E_s^{t-1}$$

(Energy for pumping for this rate schedule is equal to the energy purchased or supplied for the benefit of the customer, after losses, plus the energy for pumping in storage as of the end of the month preceding the specified month.)

$$C_s = C_{wav}^{t-1} \times E_s^{t-1}$$

(Cost of energy in storage is equal to the weighted average cost of energy for pumping for the month preceding the specified month times the energy for pumping in storage at the end of the month preceding the specified month.)

C_p = Dollars cost of energy purchased or supplied for the benefit of the customer for pumping during the specified month, including all direct costs to deliver energy to the project.

E_p = Kilowatt-hours of energy purchased or supplied for the benefit of the customer for pumping during the specified month.

L_p = Energy loss factor for transmission on energy purchased or supplied for the benefit of the customer for pumping (Expected to be .03 or three percent).

$E^{t-1}{}_s$ = Kilowatt-hours of energy in storage as of the end of the month immediately preceding the specified month.

$C^{t-1}{}_{wav}$ = Weighted average cost of energy for pumping for the month immediately preceding the specified month.

$$F_{wav} = E_G \div E_T$$

(Weighted average energy conversion factor is equal to the energy generated from pumping divided by the total energy for pumping).

E_G = Energy generated from pumping.

L_d = Weighted average energy loss factor on energy delivered by the Facilitator to the Customer.

Energy To Be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Pump–2

Availability: This rate schedule shall be available to public bodies and cooperatives who provide their own scheduling arrangement and elect to allow Southeastern to use a portion of their allocation for pumping (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom power is provided pursuant to contracts between the Government and the Customer.

Applicability: This rate schedule shall be applicable to the sale at wholesale energy generated from pumping operations at the Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This energy will be segregated from energy from other pumping operations.

Character of Service: The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Rate: The rate for energy sold under this rate schedule for the months specified shall be:

$$\text{EnergyRate} = \left(C_{wav} \div F_{wav}\right) \div \left(1 - L_d\right)$$

[computed to the nearest $.00001 (1/100 mill) per kwh].

(The weighted average cost of energy for pumping divided by the energy conversion factor, quantity divided by one minus losses for delivery.)

Where:

$$C_{wav} = C_{T2} \div E_{T2}$$

(The weighted average cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer for pumping divided by the total energy for pumping.)

$$C_{T2} = C_p + C_s$$

(Cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the Customer plus the cost of energy in storage carried over from the month preceding the specified month.)

$$E_{T2} = E_p \times \left(1 - L_p\right) + E_s^{t-1}$$

(Energy for pumping for this rate schedule is equal to the energy purchased or supplied for the benefit of the Customer, after losses, plus the energy for pumping in storage as of the end of the month preceding the specified month.)

$$C_s = C_{wav}^{t-1} \times E_s^{t-1}$$

(Cost of energy in storage is equal to the weighted average cost of energy for pumping for the month preceding the specified month times the energy for pumping in storage at the end of the month preceding the specified month.)

C_p = Dollars cost of energy purchased or supplied for the benefit of the Customer for pumping during the specified month, including all direct costs to deliver energy to the project.

E_p = Kilowatt-hours of energy purchased or supplied for the benefit of the Customer for pumping during the specified month.

= Energy loss factor for transmission on energy purchased or supplied for the benefit of the customer for pumping (Expected to be .03 or three percent.)

$$E_s^{t-1}$$
$$L_p$$

= Kilowatt-hours of energy in storage as of the end of the month immediately preceding the specified month.

$$C_{wav}^{t-1}$$

= Weighted average cost of energy for pumping for the month immediately preceding the specified month.

$$F_{wav} = E_G \div E_T$$

(Weighted average energy conversion factor is equal to the energy generated from pumping divided by the total energy for pumping.)

E_G = Energy generated from pumping.

L_d = Weighted average energy loss factor on energy delivered by the Facilitator to the Customer.

Energy To Be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Replacement–1

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom power is provided pursuant to contracts between the Government and the Customer.

Applicability: This rate schedule shall be applicable to the sale at wholesale energy purchased to meet contract minimum energy and sold under appropriate contracts between the Government and the Customer.

Character of Service: The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Rate: The rate for energy sold under this rate schedule for the months specified shall be:

$$\text{EnergyRate} = C_{wav} \div \left(1 - L_d\right)$$

[computed to the nearest $.00001 (1/100 mill) per kwh].

(The weighted average cost of energy for replacement energy divided by one minus losses for delivery.)

Where:

$$C_{wav} = C_p \div \left(E_p \times \left(1 - L_p\right)\right)$$

(The weighted average cost of energy for replacement energy is equal to the cost of replacement energy purchased divided by the replacement energy purchased, net losses.)

C_p = Dollars cost of energy purchased for replacement energy during the specified month, including all direct costs to deliver energy to the project.

E_p = Kilowatt-hours of energy purchased for replacement energy during the specified month.

L_p = Energy loss factor for transmission on replacement energy purchased (Expected to be 0 or zero percent.).

L_d = Weighted average energy loss factor on energy delivered by the facilitator to the Customer.

Energy To Be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Rate Schedule Regulation–1

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom service is provided pursuant to contracts between the Government and the Customer.

Applicability: This rate schedule shall be applicable to the sale of regulation services provided from the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters, and Richard B. Russell Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service: The service supplied hereunder will be delivered at the Projects.

Monthly Rate: The rate for service supplied under this rate schedule for the period specified shall be: $0.05 per kilowatt of total contract demand per month.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract to which the Government is obligated to supply and the Customer is entitled to receive regulation service.

Billing Month: The billing month for services provided under this schedule shall end at 12 midnight on the last day of each calendar month.

[FR Doc. E7–18537 Filed 9–19–07; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8471–3]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree. On February 3, 2006, the Center for Biological Diversity and four other plaintiffs (collectively, ''Plaintiffs'') filed an amended complaint alleging that EPA failed to perform its mandatory duty under CAA section 109(d)(1) to periodically review the air quality criteria for nitrogen oxides (''NO_X'') and sulfur oxides (''SO_X'') and the National Ambient Air Quality Standards (''NAAQS'') for nitrogen dioxide (''NO_2'') and sulfur dioxide (''SO_2''), to make such revisions to these air quality criteria and NAAQS as may be appropriate, and to promulgate such new NAAQS as may be appropriate. *Center for Biological Diversity, et al.* v. *Johnson*, No. 05–1814 (D.D.C.). The proposed consent decree establishes a schedule for EPA's review and, if appropriate, revisions of the air quality criteria for SO_X and NO_X and the NAAQS for NO_2 and SO_2 NAAQS.

DATES: Written comments on the proposed consent decree must be received by October 22, 2007.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2007–0962, online at *www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: M. Lea Anderson, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5571; fax number (202) 564–5603; e-mail address: *anderson.lea@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

Under section 109(d) of the CAA, EPA is required to periodically review air quality criteria and NAAQS and to make such revisions as may be appropriate. Plaintiffs allege that EPA has failed to do this by the deadline set forth in the CAA. The proposed consent decree establishes a schedule for EPA's review and, if appropriate, revisions of the air quality criteria for NO_X and SO_X and the NO_2 and SO_2 NAAQS. The schedule establishes dates for issuance of Integrated Science Assessments (document containing air quality criteria) addressing the human health effects of NO_X, the human health effects of SO_X, and the public welfare effects of NO_X and SO_X. The proposed consent decree also establishes a schedule for EPA's issuance of notices of proposed rulemaking and final rules concerning its review of the primary and secondary NO_2 and SO_2 NAAQS. The consent decree provides that EPA will sign a notice setting forth its decision concerning its review of (1) the primary NO_2 NAAQS no later than December 18, 2009; (2) the primary SO_2 NAAQS no later than March 2, 2010; and (3) the secondary NO_2 and SO_2 NAAQS no later than October 19, 2010.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get A Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2007–0962) contains a copy of the proposed consent decree.

The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *www.regulations.gov*, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: September 14, 2007.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E7–18573 Filed 9–19–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8471–1]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, to address three lawsuits filed by the American Iron and Steel Institute, the Specialty Steel Industry of North America and the Steel Manufacturers Association. [*American Iron and Steel Institute et. al* v. *U.S. Environmental Protection Agency,* No. 00–1434 consolidated with Nos. 00–1435 and 05–1135 (D.C. Cir.)]. In these cases, petitioners asked the Court to review final rules promulgated by the Environmental Protection Agency (EPA) relating to the New Source Performance Standards for Electric Arc Furnaces, 40 CFR Part 60, Subparts AA and AAa, and the Amendments to Standards of Performance for New Stationary Sources: Monitoring Requirements (PS–1) 65 FR 48914 (August 10, 2000). Under the terms of the proposed settlement agreement, the EPA would execute a letter explaining its position regarding the proper use of continuous opacity monitoring system (COMS) data with respect to the 40 CFR Part 60, Subparts AAa and AAa NSPS for electric arc furnace (EAF) steel facilities.

DATES: Written comments on the proposed settlement agreement must be received by October 22, 2007.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2007–0961, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Sonja Rodman, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–4079; fax number (202) 564–5603; e-mail address: *rodman.sonja@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement

Through this action, EPA is providing notice of a proposed settlement agreement to address three petitions for review of EPA actions filed by American Iron and Steel Institute (AISI), the Specialty Steel Industry of North America (SSINA) and the Steel Manufacturers Association (SMA). Two of the petitions for review were filed in October 2000. On or about October 10, 2000, Petitioners SSINA and SMA petitioned the Court for review of the ''Amendments to Standards of Performance for New Stationary Sources: Monitoring Requirements'' 65

FR 48914 (August 10, 2000) (''PS–1 Rule'') [*Specialty Steel Industry of North America & Steel Manufacturers Association* v. *U.S. Environmental Protection Agency,* No. 00–1434 (D.C. Cir)]. Also on or about October 10, 2000, Petitioners AISI, SSINA and SMA asked the Court to review the New Source Performance Standards Subparts AA and AAa, 40 CFR Part 60, Subparts AA and AAa, which they asserted had been modified by the aforementioned PS–1 Rule [*American Iron and Steel Institute, Specialty Steel Industry of North American, Steel Manufacturers Association* v. *U.S. Environmental Protection Agency,* No. 00–1435 (D.C. Cir.)]. The litigation on these two petitions was stayed pending EPA's action on a related administrative petition. Subsequently, on or about April 22, 2005, Petitioners SMA and AISI petitioned the Court for review of a final rule promulgated by EPA entitled ''Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and before August 17, 1983; and Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983.'' 70 FR 8523 (February 22, 2005) [*Steel Manufacturers Association & American Iron and Steel Institute* v. *U.S. Environmental Protection Agency,* No. 05–1135 (D.C. Cir.)]. These three lawsuits were consolidated into a single action by the United States Court of Appeals for the District of Columbia Circuit. The proposed settlement agreement would resolve all three lawsuits. Under the terms of the proposed settlement agreement, the EPA would execute a letter explaining its position regarding the proper use of continuous opacity monitoring system (COMS) data with respect to the 40 CFR Part 60, Subparts AAa and AAa NSPS for electric arc furnace (EAF) steel facilities. The text of this letter is included in the docket for this rulemaking.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Clean Air Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the settlement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement

A. How Can I Get a Copy of the Settlement?

The official public docket for this action—Docket ID No. EPA–HQ–OGC–2007–0961—contains a copy of the settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

Direct your comments to the official public docket for this action under Docket ID No. EPA–HQ–OGC–2007–0961. You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: September 14, 2007.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E7–18577 Filed 9–19–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office Of Management and Budget

September 12, 2007.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number.

FOR FURTHER INFORMATION CONTACT: Sue Gilgenbach, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–0639 or via *e-mail* at *Sue.Gilgenbach@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1107.

OMB Approval Date: 9/11/2007.

Expiration Date: 12/31/2007.

Title: Request to state and local public safety entities for information on equipment operating in affected portion of 700 MHz public safety spectrum.

Form No.: N/A.

Estimated Annual Burden: 94 responses; 1,974 total annual burden hours; an average of 21 hours per response.

Needs and Uses: Pursuant to the Commission's 700 MHz Second Report and Order (22 FCC Rcd 15289 (2007)), this information collection requires every 700 MHz Band public safety licensee, whether holding individual narrowband authorizations or operating pursuant to a State License, to provide the following information to the Commission: (1) The total number of narrowband mobile and portable handsets in operation in channels 63 and 68, and the upper 1 megahertz of channels 64 and 69, as of 30 days after the date of adoption of its 700 MHz Second Report and Order, (2) the total number of narrowband base stations serving these handsets in operation, (3) contact information for each identified set of handsets and base stations, as appropriate, (4) the areas of operation of the mobile and portable units (such as defined by the jurisdictional boundaries of the relevant public safety departments), and (5) the location, in latitude and longitude, of the base stations.

In order to create a nationwide, interoperable public safety broadband network, the 700 MHz Second Report and Order establishes a public safety band plan consistent with such a network. It consolidates narrowband operations in the upper 12 megahertz of the 700 MHz Public Safety band and designates the lower 10 megahertz of that band solely for broadband communications. It also shifts the public safety spectrum block down by 1 megahertz in order to avoid interference problems along the border with Canada. This requires relocation of all public safety narrowband operations in channels 63 and 68, and the upper 1 megahertz of channels 64 and 69. The 700 MHz Second Report and Order requires the winner of the Upper 700 MHz Band D Block license to pay the costs associated with relocating public safety narrowband operations to the consolidated channels. It also assigns responsibility to a newly created Public Safety Broadband Licensee to administer the relocation process consistent with the requirements and deadlines set forth in 700 MHz Second Report and Order. This information collection will identify the actual numbers of radios and base stations that the winner of the D Block license will be responsible for paying the costs of relocating.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–18465 Filed 9–19–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

September 12, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, 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 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. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) 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: Persons wishing to comment on this information collection should submit comments November 19, 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: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), (202) 395–5887, or via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC), Room 1–B441, 445 12th Street, SW., Washington, DC 20554. To submit your comments by e-mail send them to: *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection after the 60-day comment period, you may do so by visiting the FCC PRA web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0658.

Title: Section 27.1213, Designated Entity Provisions of Broadband Radio Service (BRS).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 60 respondents; 60 responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: Recordkeeping requirement and on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 60 hours.

Annual Cost Burden: $4,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This collection will be submitted as an extension (no change in reporting and/or recordkeeping

requirements) after this 60-day comment period to Office of Management and Budget (OMB) in order to obtain the full three-year clearance from them.

Section 27.1213(e) requires winning bidders who are designated entities (small businesses) to file with its long-form application or statement of intention, an exhibit which includes eligibility requirements as listed in § 27.213.

Section 27.1213(f) requires all holders of Basic Trading Areas (BTA) authorizations acquired by auction that claim designated entity status to maintain, at their principle place of business or with their designated agent, an updated documentary file of ownership and revenue information necessary to establish their status.

All BTA authorization holders claiming eligibility under designated entity provisions are subject to audits under § 27.1213(g). Selection for an audit may be random, on information from any source, or on the basis of other factors. These audits may include inspection of the BTA holders' books, documents and other materials sufficient to confirm that such holders' representations are, and remain, accurate.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–18466 Filed 9–19–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

September 17, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden 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. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) 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 November 19, 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 e-mail or U.S. mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, send them to Jerry Cowden, Federal Communications Commission, Room 1–B135, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Jerry Cowden via e-mail at *PRA@fcc.gov* or call (202) 418–0447.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0166.

Title: Part 42—Preservation of Records of Communications Common Carriers.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 56 respondents; 56 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: Recordkeeping, on occasion reporting and third party disclosure requirements.

Obligation to Respond: Mandatory.

Total Annual Burden: 112 hours.

Total Annual Cost: None.

Privacy Act Impact(s) Assessment: Not applicable.

Nature and Extent of Confidentiality: No confidentiality is required for this collection.

Needs and Uses: Part 42 prescribes the regulations governing the preservation of records of communications common carriers that are fully subject to the jurisdiction of the FCC. The requirements are necessary to ensure the availability of carrier records needed by Commission staff for regulatory purposes.

OMB Control No.: 3060–0939.

Title: Petitions for Assistance in Resolving E911 Disputes (Second Memorandum Opinion and Order in CC Docket No. 94–102).

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions; and state, local and tribal government.

Number of Respondents: 50 respondents; 50 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting.

Obligation to Respond: Voluntary.

Total Annual Burden: 50 hours.

Total Annual Cost: Not applicable.

Privacy Act Impact Assessment: Not applicable.

Nature and Extent of Confidentiality: No confidentiality is required for this collection.

Needs and Uses: In an effort to minimize delays in Enhanced 911 rules implementation, the Second Memorandum Opinion and Order (FCC 99–352) at paragraphs 91 and 92, provides that, in the case of disputes between wireless carriers and public safety answering points (PSAPs) regarding E911 transmission methods or other technology, the parties involved may petition for Commission assistance in resolving their dispute. Thus, in order for the Commission to participate in negotiations, petitioners will have to provide the Commission with certain data concerning the dispute.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–18583 Filed 9–19–07; 8:45 am]

BILLING CODE 6712–01–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 October 15, 2007.

A. Federal Reserve Bank of New York (Anne MacEwen, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

1. JPMorgan Chase & Co., New York, New York; to acquire control of JPMorgan Chase Bank, National Association, San Francisco, California.

B. Federal Reserve Bank of Cleveland (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Wesbanco, Inc., Wheeling, West Virginia; to merge with Oak Hill Financial, Inc., and thereby indirectly acquire Oak Hills Banks, both of Jackson, Ohio. In connection with this application, Wesbanco has applied to acquire Oak Hill Financial Services, Inc., Jackson, Ohio, and thereby engage in securities brokerage activities, pursuant to section 225.28(b)(7)(i) of Regulation Y.

C. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Atlantic Southern Financial Group, Inc., Macon, Georgia; to acquire 100 percent of the voting shares of CenterState Bank Mid Florida, Leesburg, Florida.

Board of Governors of the Federal Reserve System, September 17, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–18559 Filed 9–19–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Government in the Sunshine; Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 9:30 a.m., Monday, September 24, 2007.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets, NW., Washington, DC 20551.

STATUS: Open.

We ask that you notify us in advance if you plan to attend the open meeting and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling (202) 452–2474 or you may *register online.* You may pre-register until close of business September 21, 2007. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call (202) 452–2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on 202–452–3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202–263–4869.

Privacy Act Notice: Providing the information requested is voluntary; however, failure to provide your name, date of birth, and social security number or passport number may result in denial of entry to the Federal Reserve Board. This information is solicited pursuant to Sections 10 and 11 of the Federal Reserve Act and will be used to facilitate a search of law enforcement databases to confirm that no threat is posed to Board employees or property. It may be disclosed to other persons to evaluate a potential threat. The information also may be provided to law enforcement agencies, courts and others, but only to the extent necessary to investigate or prosecute a violation of law.

MATTERS TO BE CONSIDERED:

Discussion Agenda:

1. Final joint rules implementing the ''broker'' exceptions for banks under the Gramm-Leach-Bliley Act.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: September 17, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 07–4683 Filed 9–17–07; 4:41 pm]

BILLING CODE 6210–01–P

OFFICE OF GOVERNMENT ETHICS

Updated OGE Senior Executive Service Performance Review Board

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the updated OGE Senior Executive Service (SES) Performance Review Board.

EFFECTIVE DATE: September 20, 2007.

FOR FURTHER INFORMATION CONTACT: Daniel D. Dunning, Deputy Director for Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; Telephone: 202–482–9300; TDD: 202–208–9293; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management at 5 CFR part 430, subpart C and § 430.310 thereof in particular, one or more Senior Executive Service performance review boards. As a small executive branch agency, OGE has just one board. In order to ensure an adequate level of staffing and to avoid a constant series of recusals, the designated members of OGE's SES Performance Review Board are being drawn, as in the past, in large measure from the ranks of other agencies. The board shall review and evaluate the initial appraisal of each OGE senior executive's performance by his or her supervisor, along with any recommendations in each instance to the appointing authority relative to the performance of the senior executive. This notice updates the membership of

OGE's SES Performance Review Board as it was last published at 71 FR 71548–71549 (December 11, 2006).

Approved: September 12, 2007.

Robert I. Cusick,

Director, Office of Government Ethics.

The following officials have been selected as regular members of the SES Performance Review Board of the Office of Government Ethics:

Marilyn L. Glynn [Chair], General Counsel, Office of Government Ethics;

Daniel D. Dunning [Alternate Chair], Deputy Director for Administration and Information Management, Office of Government Ethics;

Rosalind A. Knapp, Deputy General Counsel, Department of Transportation;

Daniel L. Koffsky, Special Counsel, Office of Legal Counsel, Department of Justice; and

David Maggi, Chief, Ethics Law and Programs Division, Office of the Assistant General Counsel for Administration, Department of Commerce.

[FR Doc. E7–18518 Filed 9–19–07; 8:45 am]

BILLING CODE 6345–02–P

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will meet on Monday, October 15, 2007, through Wednesday, October 17, 2007, at Doubletree Hotel Crystal City, located at Arlington, Virginia. The sessions will take place from 8 a.m. to 5 p.m. Monday through Wednesday. The meeting will be held at the Doubletree Hotel Crystal City, 300 Army Navy Drive, Arlington, Virginia. The purpose of this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public. The sleeping rooms available at the Doubletree Hotel Crystal City will be at the Government rate of $ 201.00 (plus applicable state and local taxes, currently 10.25%) a night for a single or double. The Doubletree Hotel Crystal City is in compliance with the requirements of Title III of the Americans With Disabilities Act and meets all Fire Safety Act regulations.

William H. Turri,

Acting, Public Printer of the United States.

[FR Doc. E7–18505 Filed 9–19–07; 8:45 am]

BILLING CODE 1520–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Re-allotment of FY 2006 Funds for the Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Office of Community Services, ACF, HHS.

ACTION: Notice of determination concerning funds available for reallotment.

C.F.D.A. Number: 93.568.

SUMMARY: In accordance with Section 2607(b)(1) of the Low Income Home Energy Assistance Act (the Act), Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8621, *et seq.*), as amended, a notice was published in the **Federal Register** on August 1, 2007 announcing the Secretary's preliminary determination that $326,894 in Fiscal Year (FY) 2006 funds may be available for re-allotment. After a 30-day comment period, this amount has not changed. This notice announces that $326,894 will be re-allotted to current Low Income Home Energy Assistance Program (LIHEAP) grantees.

Pursuant to the statute cited above, funds will be re-allotted to LIHEAP grantees based upon the normal allocation formula as if the funds had been appropriated for FY 2007. No subgrantees or other entities may apply for these funds.

FOR FURTHER INFORMATION CONTACT: Nick St. Angelo, Director, Division of Energy Assistance, Office of Community Services, 370 L'Enfant Promenade, SW., Washington, DC 20447; telephone (202) 401–9351.

Dated: September 13, 2007.

Josephine B. Robinson,

Director, Office of Community Services.

[FR Doc. E7–18580 Filed 9–19–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0229]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Devices: Current Good Manufacturing Practice Quality System Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 22, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0073. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

Medical Devices: Current Good Manufacturing Practice Quality System Regulations—21 CFR Part 820 (OMB Control Number 0910–0073)—Extension

Under section 520(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(f)), the Secretary of the Department of Health and Human Services (the Secretary) has the authority to prescribe regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, pre-production design validation (including a process to assess the performance of a device but not including an evaluation of the safety and effectiveness of a device), packing, storage, and installation of a device conform to current good manufacturing practices (CGMPs), as described in such regulations, to assure that the device will be safe and effective and otherwise in compliance with the act.

The CGMP/Quality System (CGMP/QS) regulation implementing authority provided by this statutory provision is found under part 820 (21 CFR part 820) and sets forth basic CGMP requirements governing the design, manufacture, packing, labeling, storage, installation, and servicing of all finished medical

devices intended for human use. The authority for this regulation is covered under the act , i.e. 21 U.S.C. 351, 352, 360, 360c, 360d, 360e, 360h, 360i, 360j, 360l, 371, 374, 381, and 383.

The CGMP/QS regulation includes requirements for purchasing and service controls, clarifies recordkeeping requirements for device failure and complaint investigations, clarifies requirements for verifying/validating production processes and process or product changes, and clarifies requirements for product acceptance activities quality data evaluations and corrections of nonconforming product/quality problems.

Requirements are compatible with specifications in International Standards, ''ISO 9001: ''Quality Systems Model for Quality Assurance in Design/Development, Production, Installation, and Servicing.'' The CGMP/QS information collections will assist FDA inspections of manufacturers for compliance with QS requirements encompassing design, production, installation, and servicing processes.

Section 820.20(a) through (e) requires management with executive responsibility to establish, maintain, and/or review the following topics: (1) The quality policy, (2) the organizational structure, (3) the quality plan, and (4) the QS procedures of the organization.

Section 820.22 requires the conduct and documentation of QS audits and re-audits.

Section 820.25(b) requires the establishment of procedures to identify training needs and documentation of such training.

Section 820.30(a)(1) and (b) through (j), requires in respective order, the establishment, maintenance, and/or documentation of the following topics: (1) Procedures to control design of class III and class II devices, and certain class I devices as listed therein; (2) plans for design and development activities and updates; (3) procedures identifying, documenting, and approving design input requirements; (4) procedures defining design output, including acceptance criteria, and documentation of approved records; (5) procedures for formal review of design results and documentation of results in the design history file (DHF); (6) procedures for verifying device design and documentation of results and approvals in the DHF; (7) procedures for validating device design, including documentation of results in the DHF; (8) procedures for translating device design into production specifications; (9) procedures for documenting, verifying, validating approved design changes before implementation of changes; and (10) the records and references constituting the DHF for each type of device.

Section 820.40 requires manufacturers to establish and maintain procedures controlling approval and distribution of required documents and document changes.

Section 820.40(a) and (b) requires the establishment and maintenance of procedures for the review, approval, issuance and documentation of required records (documents) and changes to those records.

Section 820.50(a)(1), (a)(2), (a)(3), and (b) requires the establishment and maintenance of procedures and requirements to ensure service and product quality, records of acceptable suppliers, and purchasing data describing specified requirements for products and services.

Sections 820.60 and 820.65 require, respectively, the establishment and maintenance of procedures for identifying all products from receipt to distribution and for using control numbers to track surgical implants and life-sustaining or supporting devices and their components.

Section 820.70(a)(1) through (a)(5), (b) through (e), (g)(1) through (g)(3), (h), and (i) requires the establishment, maintenance, and/or documentation of the following topics: (1) Process control procedures; (2) procedures for verifying or validating changes to specification, method, process, or procedure; (3) procedures to control environmental conditions and inspection result records; (4) requirements for personnel hygiene; (5) procedures for preventing contamination of equipment and products; (6) equipment adjustment, cleaning, and maintenance schedules; (7) equipment inspection records; (8) equipment tolerance postings; procedures for utilizing manufacturing materials expected to have an adverse effect on product quality; and (9) validation protocols and validation records for computer software and software changes.

Sections 820.72(a), (b)(1), and (b)(2) and 820.75(a) through (c) require, respectively, the establishment, maintenance, and/or documentation of the following topics: (1) Equipment calibration and inspection procedures; (2) national, international or in-house calibration standards; (3) records that identify calibrated equipment and next calibration dates; (4) validation procedures and validation results for processes not verifiable by inspections and tests; (5) procedures for keeping validated processes within specified limits; (6) records for monitoring and controlling validated processes; and (7) records of the results of revalidation where necessitated by process changes or deviations.

Sections 820.80(a) through (e) and 820.86 require, respectively, the establishment, maintenance, and/or documentation of the following topics: (1) Procedures for incoming acceptance by inspection, test or other verification; (2) procedures for ensuring that in-process products meet specified requirements and the control of product until inspection and tests are completed; (3) procedures for, and records that show, incoming acceptance or rejection is conducted by inspections, tests or other verifications; (4) procedures for, and records that show, finished devices meet acceptance criteria and are not distributed until device master record (DMR) activities are completed; (5) records in the device history record (DHR) showing acceptance dates, results and equipment used; and (6) the acceptance/rejection identification of products from receipt to installation and servicing.

Sections 820.90(a), (b)(1), (b)(2), and 820.100 require, respectively, the establishment, maintenance and/or documentation of the following topics: (1) Procedures for identifying, recording, evaluating, and disposing of nonconforming product; (2) procedures for reviewing and recording concessions made for, and disposition of, nonconforming product; (3) procedures for reworking products, evaluating possible adverse rework effect and recording results in the DHR; (4) procedures and requirements for corrective and preventive actions, including analysis, investigation, identification and review of data, records, causes and results; and (5) records for all corrective and preventive action activities.

Section 820.100(a)(1) through (a)(7) states that procedures and requirements shall be established and maintained for corrective/preventive actions, including the following: (1) Analysis of data from process, work, quality, servicing records; investigation of nonconformance causes; (2) identification of corrections and their effectiveness; (3) recording of changes made; and (4) appropriate distribution and managerial review of corrective and preventive action information.

Section 820.120 states that manufacturers shall establish/maintain procedures to control labeling storage/application; and examination/release for storage and use, and document those procedures.

Sections 820.120(b) and (d), 820.130, 820.140, 820.150(a) and (b), 820.160(a)

and (b), and 820.170(a) and (b), respectively, require the establishment, maintenance, and/or documentation of the following topics: (1) Procedures for controlling and recording the storage, examination, release and use of labeling; (2) the filing of labels/labeling used in the DHR; (3) procedures for controlling product storage areas and receipt/dispatch authorizations; (4) procedures controlling the release of products for distribution; (5) distribution records that identify consignee, product, date, and control numbers; and (6) instructions, inspection and test procedures that are made available, and the recording of results for devices requiring installation.

Sections 820.180(b) and (c), 820.181(a) through (e), 820.184(a) through (f), and 820.186 require, respectively, the maintenance of records that are: (1) Retained at prescribed site(s), made readily available and accessible to FDA and retained for the device's life expectancy or for 2 years; (2) contained or referenced in a DMR consisting of device, process, quality assurance, packaging and labeling, and installation, maintenance, and servicing specifications and procedures; (3) contained in a DHR and demonstrate the manufacture of each unit, lot or batch of product in conformance with DMR and regulatory requirements, include manufacturing and distribution dates, quantities, acceptance documents, labels and labeling, control numbers; and (4) contained in a quality system record (QSR), consisting of references, documents, procedures and activities not specific to particular devices.

Sections 820.198(a) through (c) and 820.200(a) through (d), respectively, requires the establishment, maintenance and/or documentation of the following topics: (1) Complaint files and procedures for receiving, reviewing, and evaluating complaints; (2) complaint investigation records identifying the device, complainant, and relationship of the device to the incident; (3) complaint records that are reasonably accessible to the manufacturing site or at prescribed sites; (4) procedures for performing and verifying that device servicing requirements are met and that service reports involving complaints are processed as complaints; and (5) service reports that record the device, service activity, and test and inspection data.

Section 820.250 requires the establishment and maintenance of procedures to identify valid statistical techniques necessary to verify process and product acceptability; and sampling plans, when used, that are written and based on valid statistical rationale, and procedures for ensuring adequate sampling methods.

The CGMP/QS regulation amends and revises the CGMP requirements for medical devices set out under part 820. The regulation adds design and purchasing controls; modifies previous critical device requirements; revises previous validation and other requirements; and harmonizes device CGMP requirements with QS specifications in the international standard, ''ISO 9001: Quality Systems Model for Quality Assurance in Design/Development Production, Installation and Servicing.'' The rule does not apply to manufacturers of components or parts of finished devices, nor to manufacturers of human blood and blood components subject to 21 CFR part 606. With respect to devices classified in class I, design control requirements, apply only to class I devices listed in § 820.30(a)(2) of the regulation. The rule imposes burden upon: (1) Finished device manufacturer firms which are subject to all recordkeeping requirements; (2) finished device contract manufacturers; specification developers; and (3) repacker, relabelers and contract sterilizer firms, which are subject only to requirements applicable to their activities. In addition, re-manufacturers of hospital single-use devices (SUDs) will now be considered to have the same requirements as manufacturers in regard to this regulation. The establishment, maintenance and/or documentation of procedures, records and data required by this regulation will assist FDA in determining whether firms are in compliance with CGMP requirements, which are intended to ensure that devices meet their design, production, labeling, installation, and servicing specifications and, thus are safe, effective and suitable for their intended purpose. In particular, compliance with CGMP design control requirements should decrease the number of design-related device failures that have resulted in deaths and serious injuries.

The CGMP/QS regulation applies to approximately 8,963 respondents. These recordkeepers consist of 8,945 original respondents and an estimated 18 hospitals which remanufacture or reuse SUDs. They include manufacturers, subject to all requirements and contract manufacturers, specification developers, repackers, relabelers and contract sterilizers, subject only to requirements applicable to their activities. Hospital remanufacturers of SUDs are now defined to be manufacturers under guidelines issued by FDA's Center for Devices and Radiological Health's (CDRH), Office of Surveillance and Biometrics. Respondents to this collection have no reporting activities, but must make required records available for review or copying during FDA inspection. The regulation contains additional recordkeeping requirements in such areas as design control, purchasing, installation, and information relating to the remanufacture of SUDs. The estimates for this burden are derived from those incremental tasks that were determined when the new CGMP/QS regulation became final as well as those carryover requirements. The carryover requirements are based on decisions made by the agency on July 16, 1992, under OMB clearance submission 0910–0073, which still provides valid baseline data.

FDA estimates respondents will have a total annual recordkeeping burden of approximately 3,076,370 hours. This figure also consists of approximately 143,052 hours spent on a startup basis by 650 new firms.

In the **Federal Register** of Monday, July 9, 2007, FDA published a 60-day notice soliciting public comments on the information collection requirements for the proposed extension of this collection of information. In response to that notice, no comments were received.

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

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Hours	Hours Per Recordkeeper	Total Hours
820.20(a)	8,963	1	8,963	6.58	58,977
820.20(b)	8,963	1	8,963	4.43	39,706
820.20(c)	8,963	1	8,963	6.17	55,302

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Hours	Hours Per Recordkeeper	Total Hours
820.20(d)	8,963	1	8,963	9.89	88,644
820.20(e)	8,963	1	8,963	9.89	88,644
820.22	8,963	1	8,963	32.72	293,269
820.25(b)	8,963	1	8,963	12.68	113,651
820.30(a)(1)	8,963	1	8,963	1.75	15,685
820.30(b)	8,963	1	8,963	5.95	53,330
820.30(c) and (d)	8,963	1	8,963	1.75	15,685
820.30(e)	8,963	1	8,963	23.39	209,645
820.30(f) and (g)	8,963	1	8,963	37.42	335,395
820.30(h)	8,963	1	8,963	3.34	29,936
820.30(i)	8,963	1	8,963	17.26	154,701
820.30(j)	8,963	1	8,963	2.64	23,662
820.40	8,963	1	8,963	8.91	79,860
820.40(a)and (b)	8,963	1	8,963	2.04	18,285
820.50(a)(1) through (a)(3)	8,963	1	8,963	21.90	196,290
820.50(b)	8,963	1	8,963	6.02	53,957
820.6	8,963	1	8,963	0.32	2,868
820.65	8,963	1	8,963	0.67	6,005
820.70(a)(1) through (a)(5), (b), and (c)	8,963	1	8,963	1.85	16,582
820.70(d)	8,963	1	8,963	2.87	25,724
820.70(e)	8,963	1	8,963	1.85	16,582
820.70(g)(1) through (g)(3)	8,963	1	8,963	1.43	12,817
820.70(h)	8,963	1	8,963	1.85	16,582
820.70(i)	8,963	1	8,963	7.50	67,223
820.72(a)	8,963	1	8,963	4.92	44,098
820.72(b)(1) and (b)(2)	8,963	1	8,963	1.43	12,817
820.75(a)	8,963	1	8,963	2.69	24,110
820.75(b)	8,963	1	8,963	1.02	9,142
820.75(c)	8,963	1	8,963	1.11	9,949
820.80(a) through (e)	8,963	1	8,963	4.80	43,022
820.86	8,963	1	8,963	0.79	7,081
820.90(a), (b)(1), and (b)(2)	8,963	1	8,963	4.95	44,367
820.100 (a)(1) through (a)(7)	8,963	1	8,963	12.48	111,858
820.100(b)	8,963	1	8,963	1.28	11,473
820.120(b) and (d)	8,963	1	8,963	0.45	4,033
820.130	8,963	1	8,963	0.45	4,033

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Hours	Hours Per Recordkeeper	Total Hours
820.140	8,963	1	8,963	6.34	56,825
820.150(a) and (b)	8,963	1	8,963	5.67	50,820
820.160(a) and (b)	8,963	1	8,963	0.67	6,005
820.170(a) and (b)	8,963	1	8,963	1.50	13,445
820.180(b) and (c)	8,963	1	8,963	1.50	13,445
820.181(a) through (e)	8,963	1	8,963	1.21	10,845
820.184(a) through (f)	8,963	1	8,963	1.41	12,638
820.186	8,963	1	8,963	0.40	3,585
820.198(a) through (c)	8,963	1	8,963	4.94	44,277
820.200(a) and (d)	8,963	1	8,963	2.61	23,393
820.25	8,963	1	8,963	0.67	6,005
Totals					3,072,337

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

Burden (labor) hour and cost estimates were originally developed under FDA contract by Eastern Research Group, Inc. (ERG), in 1996 when the CGMP/QS regulation became final. These figures are still accurate. Additional factors considered in deriving estimates included:

• Establishment Type: Query has been made of CDRH's registration/listing databank and has counted 8,963 domestic firms subject to CGMPs. In addition, hospitals which reuse or remanufacture devices are now considered manufacturers under new FDA guidance. After investigations of many hospitals and the changes in enforcements of FDA's requirements for hospitals, the number of reuse or remanufactures of SUDs have decreased from the estimated 66 to an estimated 18 hospitals. Because the total number of registered firms is not static, the number of respondents will fluctuate from year to year resulting in slight changes to the overall burden. Currently, there are 8,963 firms subject to the CGMPs; an increase from the last renewal of 8,254.

• Potentially Affected Establishments: Except for manufacturers, not every type of firm is subject to every CGMP/QS requirement. For example, all are subject to FDA's quality policy regulations (§ 820.20(a)), document control regulations (§ 820.40), and other requirements, whereas only manufacturers and specification developers are subject to FDA's design controls regulations (§ 820.30). The type of firm subject to each requirement was identified by ERG.

FDA estimates the burden hours (and costs) based on the last approved renewal for this information collection.

FDA estimates that some 650 ''new'' establishments (marketing devices for the first time) will expend some 143,052 ''development'' hours on a one-time startup basis to develop records and procedures for the CGMP/QS regulation.

FDA estimates that annual labor hours are apportioned as follows: 40 percent goes to requirements dealing with manufacturing specifications, process controls and the DHR; 20 percent goes to requirements dealing with components and acceptance activities; 25 percent goes to requirements dealing with equipment, records (the DMR and QSR), complaint investigations, labeling/packaging and reprocessing/investigating product nonconformance; and 15 percent goes to quality audit, traceability, handling, distribution, statistical, and other requirements.

Dated: September 14, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–18582 Filed 9–19–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Educational Workshops on Current Good Manufacturing Practices; Public Workshops

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshops.

SUMMARY: The Food and Drug Administration (FDA) is announcing a series of educational workshops on quality pharmaceutical production under current good manufacturing practice (CGMP). The workshops, which will be held in collaboration with the Parenteral Drug Association (PDA), are intended to educate participants on current methods for compliance with good manufacturing practices (GMP). The workshops are being offered to help ensure effective CGMP programs and to further the common goals of FDA and providers of quality pharmaceutical products.

DATES: See table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: See table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Erik N. Henrikson, Center for Drug Evaluation and Research (HF–18), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–9190, *erik.henrikson@fda.hhs.gov*, or

Wanda Neal, Parenteral Drug Association, 4350 East West Hwy., suite 200, Bethesda, MD 20814, 301–656–5900, FAX: 301–986–0296, *neal@pda.org*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Who Should Attend?

This announcement is directed towards professionals involved in the manufacture, control, and regulation of pharmaceutical products who will benefit from these workshops, including process/production engineers, manufacturing personnel, quality assurance/quality control and regulatory affairs professionals, consultants, regulatory investigators, and CGMP compliance officials. Other entities or individuals may also be interested in attending.

B. Where and When Will These Workshops Be Held?

We have scheduled four workshops. The locations and times are listed in table 1 of this document.

TABLE 1.—WORKSHOP LOCATIONS AND SCHEDULES

Workshop Address	Dates and Local Times
Hyatt Regency Bethesda, 1 Bethesda Metro Center, Bethesda, MD 20814	November 1 and 2, 2007, from 9 a.m. to 5 p.m. each day
The Gresham Hotels, 23 Upper O'Connell St., Dublin 1, Ireland	December 10 and 11, 2007, from 9 a.m. to 5 p.m. each day
Peking University, Beijing, China 100871	April 21 and 22, 2008, from 9 a.m. to 5 p.m. each day
Grand Hyatt Shanghai, Jin Mao Tower, 88 Century Blvd., Pudong, Shanghai, China 200121	April 24 and 25, 2008, from 9 a.m. to 5 p.m. each day

C. How Can I Participate?

You can participate in person. Anyone interested in the GMP workshops can register through the contact person (see **FOR FURTHER INFORMATION CONTACT**).

D. Is There a Registration Fee for This Workshop?

Yes, a registration fee is required for this workshop. The registration fee includes workshop reference materials and meals. Registration fees for the Bethesda, MD and Dublin, Ireland workshops are listed in table 2 of this document. The registration fee for both China locations (Beijing and Shanghai) is $550 with no discounts. All fees are given in U.S. dollars.

TABLE 2.—REGISTRATION FEES FOR THE BETHESDA, MD AND DUBLIN, IRELAND WORKSHOPS

Date of Registration	PDA Member	Nonmember	Government Employee or Health Authority	Academic	Student
Through October 1, 2007	$1,295	$1,695	$350	$350[1]	$150
After October 1, 2007	$1,495	$1,895	$405	$405[1]	$180

[1] Must be PDA member to receive this rate.

E. How Can I Get Additional Information?

The notice of participation form, information about the workshops, and other related documents are available from the contact person (see **FOR FURTHER INFORMATION CONTACT**) and on the Internet at *http://www.fda.gov/cder/workshop.htm*.

II. Background Information

A. Why Is FDA Cosponsoring These Workshops?

FDA is cosponsoring these 2-day workshops to provide information and training opportunities for industry as well as CGMP compliance officials.

B. What Will Be Covered?

The workshops will provide information on specific topics designed to educate and guide participants on methodologies and implementation of CGMP as applied to quality drug manufacturing. Presentations by both FDA and industry will provide a regulatory and practical perspective on the current relevant critical topics.

Dated: September 14, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–18556 Filed 9–19–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Children's Hospital Graduate Medical Education (CHGME) Payment

Program Annual Report: NEW

The CHGME Payment Program was enacted by Public Law 106–129 to provide Federal support for graduate medical education (GME) to freestanding children's hospitals, similar to Medicare GME support received by other non-children's hospitals. The legislation mandates that eligible children's hospitals will receive payments for both direct and indirect medical education. Direct payments are

designed to offset the expenses associated with operating approved graduate medical residency training programs and indirect payments are designed to compensate hospitals for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.

The CHGME Payment Program was reauthorized for a period of five years in October 2006 by Public Law 109–307. The reauthorizing legislation requires that children's hospitals participating and receiving funds from the CHGME Payment Program provide information about their residency training programs in an annual report that will be an addendum to the hospitals' annual applications for funds. Specifically, data are required to be collected on: (1) The types of training programs that the hospital provided for residents such as general pediatrics, internal medicine/pediatrics, and pediatric subspecialties including both American Board of Pediatrics certified medical subspecialties and non-medical subspecialties approved by other medical certification boards; (2) the number of training positions for residents, the number of such positions recruited to fill, and the number of positions filled; (3) the types of training that the hospital provided for residents related to the health care needs of difference populations such as children who are underserved for reasons of family income or geographic location, including rural and urban areas; (4) changes in residency training the hospital made during an academic year, including changes in curricula, training experiences, and types of training programs, and benefits that have resulted from such changes and changes for purposed of training residents in the measurement and improvement and the quality and safety of patient care; and (5) the numbers of residents (disaggregated by specialty and subspecialty) who completed training in the academic year and provide care within the borders of the service area of the hospital or within the borders of the State in which the children's hospital is located. For purposes of the annual report data collection, ''residents'' are those who are (1) in full-time equivalent resident training positions in any training program sponsored by the hospital; or (2) in a training program sponsored by an entity other than the hospital who spend more than 75 percent of their time training at the hospital.

The annual report data collection instruments consist of Excel workbooks with several pages (worksheets) each. These data collection instruments for the annual report were pre-tested by nine participating CHGME Payment Program hospitals. Each hospital provided an estimate of the number of hours required to complete each part of the annual report. Following the pre-test, the data collection instruments were significantly reduced by collapsing certain categories, shifting several questions from the individual GME training program level to the hospital level instrument, and by omitting several questions. As a result, the estimated burden to each respondent was significantly reduced.

The estimated annual burden is as follows:

Form name	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
Screening Instrument	57	1	57	10.0	570.0
Annual Report, Hospital and Program-Level Information	57	1	57	74.8	4263.6
Total	57		57	84.8	4833.6

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: September 14, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–18561 Filed 9–19–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Availability of Final Policy Guidance

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final Agency Guidance and Response to Public Comments.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing a final Agency Guidance (''Policy Information Notice'' (PIN) 2007–16) to describe and clarify the circumstances under which Federal Tort Claims Act (FTCA)—deemed Health Center Program grantees are covered under the FTCA as they respond to emergencies. The PIN, ''Federal Tort Claims Act Coverage for Health Center Program Grantees Responding to Emergencies,'' and the Agency's ''Response to Public Comments'' are available on the Internet at *http://bphc.hrsa.gov/policy/pin0716.*

DATES: The effective date of this final Agency guidance is August 22, 2007.

BACKGROUND: HRSA administers the Health Center Program, which supports more than 3,800 health care delivery sites, including community health centers, migrant health centers, health care for the homeless centers, and public housing primary care centers. Health centers serve clients that are primarily low-income and minorities, and deliver comprehensive, culturally competent, quality primary health care services to patients regardless of their ability to pay. Charges for health care services are set according to income.

On March 15, 2007, HRSA made the draft PIN, ''Federal Tort Claims Act Coverage for Health Center Program Grantees Responding to Emergencies,'' available for public comment on HRSA's Web site. Comments were due to HRSA by May 31, 2007.

Comments were received from 14 organizations and/or individuals. After review and careful consideration of all comments received, HRSA has amended the PIN to incorporate certain recommendations from the public. The final PIN reflects these changes.

In addition to making the final PIN available on HRSA's Web site, HRSA is also posting the Agency's ''Response to Public Comments.'' The purpose of that document is to summarize the major comments received and describe the Agency's response, including any corresponding changes made to the PIN. Where comments did not result in a

revision to the PIN, explanations are provided.

FOR FURTHER INFORMATION CONTACT: For questions regarding this notice, please contact the Office of Policy and Program Development, Bureau of Primary Health Care, HRSA, at 301–594–4300.

Dated: September 14, 2007.

Elizabeth M. Duke,

Administrator.

[FR Doc. E7–18562 Filed 9–19–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Availability of Final Policy Guidance

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final Agency Guidance and Response to Public Comments.

DATES: The effective date of this final Agency guidance is August 22, 2007.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing a final Agency Guidance (''Policy Information Notice'' (PIN) 2007–15) to provide guidance on emergency management expectations for health centers to assist them in planning and preparing for future emergencies through the development and maintenance of an effective and appropriate emergency management strategy. The PIN, ''Health Center Emergency Management Program Expectations,'' and the Agency's ''Response to Public Comments'' are available on the Internet at *http://bphc.hrsa.gov/policy/pin0715.*

Background: HRSA administers the Health Center Program, which supports more than 3,800 health care delivery sites, including community health centers, migrant health centers, health care for the homeless centers, and public housing primary care centers. Health centers serve clients that are primarily low-income and minorities, and deliver comprehensive, culturally competent, quality primary health care services to patients regardless of their ability to pay. Charges for health care services are set according to income.

On February 27, 2007, HRSA made the draft PIN available for public comment on HRSA's Web site. The purpose of the PIN was to provide guidance on emergency management expectations for health centers to assist them in planning and preparing for future emergencies. Comments were due to HRSA by April 13, 2007.

Comments were received from 31 organizations and/or individuals. After review and careful consideration of all comments received, HRSA amended the PIN to incorporate certain recommendations from the public. The final PIN reflects these changes.

In addition to making the final PIN available on HRSA's Web site, HRSA is also posting the Agency's ''Response to Public Comments.'' The purpose of the document is to summarize the major comments received and describe the Agency's response, including any corresponding changes made to the PIN. Where comments did not result in a revision to the PIN, explanations are provided.

FOR FURTHER INFORMATION CONTACT: Please contact the Office of Policy and Program Development at (301) 594–4300 for any questions regarding this PIN.

Dated: September 14, 2007.

Elizabeth M. Duke,

Administrator.

[FR Doc. E7–18560 Filed 9–19–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Independent Evaluation of the Substance Abuse Prevention and Treatment Block Grant Program—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), Division of State and Community Assistance administers the Substance Abuse Prevention and Treatment Block Grant (SAPT BG) in collaboration with the Center for Substance Abuse Prevention (CSAP), Division of State Programs. The Substance Abuse Prevention and Treatment Block Grant is funded by Congress to provide monies to States, Territories, and one Native American Tribe for the purpose of planning, carrying out, and evaluating activities to prevent and treat substance abuse and other allowable activities. The SAPT BG constitutes approximately 40 percent of all States budgets for substance abuse prevention and treatment services and activities, and is the primary Federal source of funding. States have flexibility in determining how funds should be allocated, but there are specific set-aside and maintenance of effort requirements that must be met in order to receive funding. These requirements, introduced by both the ADAMHA Reorganization Act of 1992 and the Children's Health Act of 2000, are listed below:

TABLE 1.—SAPT BG SET-ASIDE PROVISIONS [a]

Category	Set-aside provision
Prevention and treatment activities regarding alcohol.	Not less than 35 percent of SAPT BG funding*.
Prevention and treatment activities regarding other drugs.	Not less than 35 percent of SAPT BG funding*.
Primary prevention programs	Not less than 20 percent of SAPT BG funding.
Pregnant women and women with dependent children.	Not less than amount equal to expenditure in FY 1994.
Tuberculosis services	No set amount but services must be provided to receive SAPT BG funds.
HIV services [b]	No more than 5 percent increase over State allotment for HIV services in FY 1991.

TABLE 1.—SAPT BG SET-ASIDE PROVISIONS a—Continued

Category	Set-aside provision
Prohibition of sale of tobacco to individuals under age of 18 (Synar amendment).	State must enforce law against sale of tobacco to underage individuals to receive SAPT BG funds—noncompliance leads to a 10 percent reduction in funds the first applicable fiscal year; 20 percent, the second year; 30 percent, the third year; and 40 percent, the fourth year.
Maintenance of effort (MOE) for State expenditures.	State will maintain funding at no less than the average level of expenditures for the 2 years preceding the fiscal year for which the State is applying.
Administrative expenses	Limited to 5 percent of SAPT BG funding.

[a] These set-asides shown in this table were included in the 1992 SAPT BG authorizing legislation 42 U.S.C. 300x–21 to 42 U.S.C. 300x–62). In the Children's Health Act of 2000 (Pub. L. 106–310) Sec. 3303(a)(1)), however, the set-asides marked with asterisks were removed.

[b] For designated States whose rate of AIDS cases is 10 or more per 100,000 individuals as confirmed by the Centers for Disease Control and Prevention.

In addition to the set-asides, the SAPT BG Program has identified 17 goals which must be met by States in order to receive this Federal funding:

TABLE 2.—FEDERAL GOALS FOR THE SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT

GOAL #1: Continuum of substance abuse treatment services.	The State shall expend block grant funds to maintain a continuum of substance abuse treatment services that meet these needs for the services identified by the state (see 42 U.S.C. 300x–21(b) and 45 CFR 96.122(f)(g)).
GOAL #2: Spending on primary prevention programs.	The State agrees to spend not less than 20 percent on primary prevention programs for individuals who do not require treatment for substance abuse, specifying the activities proposed for each of the six strategies (see 42 U.S.C. 300x–22(b)(1) and 45 CFR 96.124(b)(1)).
GOAL #3: Spending on services for pregnant women and children.	The State agrees to expend not less than an amount equal to the amount expended by the State for FY 1994 to establish new programs or expand the capacity of existing programs to make available treatment services designed for pregnant women and children with dependent children; and, directly or through arrangements with other public or nonprofit entities, to make available prenatal care to women receiving such treatment services, and, while the women are receiving services, child care (see 42 U.S.C. 300x–22(c)(1) and 45 CFR 96.124(c)(e)).
GOAL #4: Treatment for intravenous drug abusers.	The State agrees to provide treatment to intravenous drug abusers that fulfills the 90 percent capacity reporting, 14–120 day performance requirement, interim services, outreach activities and monitoring requirements (see 42 U.S.C. 300x–23 and 45 CFR 96.126).
GOAL #5: Tuberculosis services for people in substance abuse treatment.	The State agrees, directly or through arrangements with other public or nonprofit private entities, to routinely make available tuberculosis services to each individual receiving treatment for substance abuse and to monitor such service delivery (see 42 U.S.C. 300x–24 and 45 CFR 96.127).
GOAL #6: Early intervention services for HIV for people in substance abuse treatment.	Designated States agree to provide treatment for persons with substance abuse problems with an emphasis on making available within existing programs early intervention services for HIV in areas of the state that have the greatest need for such services and to monitor such service delivery (see 42 U.S.C. 300x–24(b) and 45 CFR 96.128).
GOAL #7: Group homes for recovering substance abusers.	Designated States agree to provide for and encourage the development of group homes for recovering substance abusers through the operation of a revolving loan fund (see 42 U.S.C. 300x–25 and 45 CFR 96.129).
GOAL #8: State efforts to reduce the availability of tobacco products.	The State agrees to continue to have in effect a State law that makes it unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18; and, to enforce such laws in a manner than can reasonably be expected to reduce the extent to which tobacco products are available to individuals under age 18 (see 42 U.S.C. 300x–26 and 45 CFR 96.130).
GOAL #9: Preferential admission of pregnant women to substance abuse treatment.	The State agrees to ensure that each pregnant woman be given preference in admission to treatment facilities; and, when the facility has insufficient capacity, to ensure that the pregnant woman be referred to the State, which will refer the woman to a facility that does have the capacity to admit the woman, or if no such facility has the capacity to admit the woman, will make available interim services within 48 hours (see 42 U.S.C. 300x–27 and 45 CFR 96.131).
GOAL #10: Improved process for referring individuals to substance abuse treatment.	The State agrees to improve the process in the State for referring individuals to the treatment modality that is most appropriate for the individual (see 42 U.S.C. 300x–28 and 45 CFR 96.132(a)).
GOAL #11: Continuing education for employees at substance abuse prevention and/or treatment facilities.	The State agrees to provide continuing education for the employees of facilities which provide prevention activities or treatment services (or both) (see 42 U.S.C. 300x–28(b) and 45 CFR 96.132(b)).
GOAL #12: Coordination of services	The State agrees to coordinate prevention activities and treatment services with the provision of other appropriate services (see 42 U.S.C. 300x–28(c) and 45 CFR 96.132(c)).
GOAL #13: Needs assessment by State and locality.	The State agrees to submit an assessment of the need for both treatment and prevention in the State for authorized activities, both by locality and by the State in general (see 42 U.S.C. 300x–29 and 45 CFR 96.133).
GOAL #14: Ensuring that needles and syringes are not provided for illegal drug use.	The State agrees to ensure that no program funded through the block grant will use funds to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs (see 42 U.S.C. 300x–31(a)(1)(F) and 45 CFR 96.135(a)(6)).

TABLE 2.—FEDERAL GOALS FOR THE SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT—Continued

GOAL #15: Improving the quality and appropriateness of treatment services.	The State agrees to assess and improve, through independent peer review, the quality and appropriateness of treatment services delivered by provider that receive funds from the block grant (see 42 U.S.C. 300x–53(a) and 45 CFR 96.136).
GOAL #16: Protecting patient records from inappropriate disclosure.	The State agrees to ensure that the State has in effect a system to protect patient records from inappropriate disclosure (see 42 U.S.C. 300x–53(b), 45 CFR 6.132(e), and 42 CFR part 2).
GOAL #17: Compliance with 42 CFR part 54 Charitable Choice Provisions and Regulations.	The State agrees to ensure that the State has in effect a system to comply with 42 CFR part 54 (see 42 CFR 54.8(c)(4) and 54.8(b)) Charitable Choice Provisions and Regulations).

Source: Performance Partnership Grant Branch, Division of State and Community Assistance, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, ''Uniform Application, FY 2007, Substance Abuse Prevention and Treatment Block Grant (42 U.S.C. 300x–21 through 300x–64),'' Rockville, MD, 2004.

The FY 2003 Office of Management and Budget (OMB) Program Assessment Rating Tool (PART) assessment of the SAPT BG Program rated the program as ''Ineffective.'' The SAPT BG received high scores on three of four PART areas rated, including Program Purpose and Design, Strategic Planning, and Program Management. However, the scores could have been even higher in these areas if data were available to document that the resources were reaching the intended beneficiaries or the program had ambitious targets and long-term measures. In the fourth area, Program Results/Accountability, where a low rating was achieved, it was found that ''no independent evaluation of the program has been completed'' to establish that the SAPT BG Program is effective and fulfilling its legislative mandates.

In direct response to this OMB finding, a contract was developed and awarded in FY 2003 to conduct an Evaluability Assessment (EA) to determine the feasibility of conducting an independent evaluation of the SAPT BG Program, and subsequently, to fund such an evaluation effort. EA is a recognized program evaluation methodology which involves collaboration with multiple stakeholders and development of a program logic model used to plan formal evaluations of large and/or complex programs, such as the SAPT BG Program. The findings of the EA were used as a foundation in the development and awarding of a multi-year contract in FY 2004 to conduct an independent, comprehensive evaluation of the SAPT BG Program.

As noted in the OMB PART Assessment, the legislative intent of the SAPT BG is to provide funding to States by formula to plan, carry out, and evaluate activities to prevent and treat substance abuse. Therefore, the evaluation is designed to examine the system-level activities, outputs, and outcomes associated with the program in relation to its goals.

In this evaluation, a multi-method evaluation approach is being used to examine Federal and State performance with regard to the SAPT BG and its identified goals. This approach emphasizes a qualitative and quantitative examination of both the SAPT BG process (e.g., activities and outputs in the logic model) and system-level outcomes whereby Federal and State stakeholder perspectives on the SAPT BG, as captured through semi-structured interviews and surveys, are corroborated and compared to the considerable amount of already-collected source documents and data provided by States, CSAT, and CSAP (e.g., Web Block Grant Application System (BGAS), Treatment Episode Data Set (TEDS), National Survey on Drug Use and Health (NSDUH), the Minimum Data Set (MDS), Technical Review Reports, State Prevention and Synar System Reports).

The purpose of the evaluation is to determine the extent to which States and the Federal Government are implementing the SAPT BG according to the authorizing legislation and implementing regulations. The evaluation will cover the following domains: The State SAPT BG planning process, Federal review of SAPT BG applications including annual reports, progress reports and intended use plans, Federal technical assistance, State SAPT BG implementation, Federal oversight and management, State SAPT BG reporting, and State-level outcomes. The results of this evaluation will not only document the effectiveness of the SAPT BG Program in supporting the Substance Abuse Prevention and Treatment system, they will also help guide CSAT and CSAP and the States to improve the methods by which they implement the SAPT BG, including the capacity to collect, analyze, and interpret the National Outcome Measures (NOMs). As a separate, parallel SAMHSA initiative, the NOMs project began after the SAPT BG Evaluation contract inception and was not used in the SAPT BG EA or the development of the evaluation framework and logic model. However, selected NOMs items that relate to the evaluation framework and logic model will be examined in the independent evaluation. These selected NOMs items include:

- Increase in number of persons reporting a reduction in 30-day drug/alcohol use
- Increase in number of persons employed or in school
- Reduction in number of drug or alcohol-related arrests
- Increase in number of persons in stable housing situations (reduction in homelessness)
- Increase in access to services measured by unduplicated counts of persons served and numbers served compared to those in need
- Increase in number of persons receiving evidence-based services.

In addition, the evaluators will attempt to collect information on system-wide client perception of care. Statistical tests for association between outcome measures and a number of independent variables will be conducted. Examples of independent variables include, but are not limited to, level of funding, level of the Single State Agency (SSA) for substance abuse services within State government, degree of SSA partnership with other State agencies and community organizations, and amount of State-funded support available for research and training activities.

In addition to information about the selected NOMs domains, the evaluation will also examine systemic measures related to infrastructure. Infrastructure refers to the resources, systems, and policies that support the nation's public substance abuse prevention and treatment system, and is a potential contributor to significant State behavioral health system outcomes. Examples of infrastructure include staff training, policy changes, and service availability.

Because this is the first-ever comprehensive evaluation of the SAPT BG Program, the data collection activities are more extensive (and time intensive) than would be expected of a

program that has been regularly evaluated. These data will serve as a baseline for future evaluations. The two primary data collection strategies will include open-ended interviews and web-based surveys. Interviews will be conducted with Federal staff involved in the administration of the SAPT BG and State staff from all States and Territories involved in their State's implementation of the SAPT BG Program. Two web-based surveys will be administered to all individuals who formally participate in monitoring the SAPT BG as part of the Technical Review or State Prevention and Synar System Review Teams.

The interview protocol for Federal staff includes 80 questions (mostly open-ended), and, on average, should take 90 minutes to complete. The interview protocol for the State staff includes 99 questions (again, mostly open-ended), and should take, on average, 3 hours to complete. Both the Federal staff interviews and the State staff interviews will be conducted as in-person interviews. While the Federal staff will each be interviewed individually, a single group State staff interview will be conducted for all relevant State staff. The SSA Directors will be asked to select those State staff who they believe are most knowledgeable about the SAPT BG for participation in the interviews. It is anticipated that, at a minimum, the State Planner, the State Data Analyst, the State Prevention Lead, the State Treatment Lead, one additional State staff member, and the State SSA Director will participate.

The two web-based surveys will be distributed to the two current sets of formal reviewers for the SAPT BG: Technical Reviewers and State Prevention and Synar System Reviewers. The web-based surveys are designed so that each stakeholder group receives survey questions designed to capture their specific knowledge of and experience with the SAPT BG. The Technical Reviewer survey contains 47 questions and the State Prevention and Synar System Reviewer survey has 27 questions. Each survey should take approximately 1 hour or less to complete. Reviewers will submit their responses to the survey online over a 3-week period.

Table 3 summarizes the estimated annual total burden hours for the in-person and web-based surveys for the Federal and State staff stakeholders and Technical Reviewers, Synar Reviewers.

TABLE 3.—ESTIMATED REPORTING BURDEN OF INTERVIEWS AND WEB-BASED SURVEYS

Respondents	Number of respondents	Average hours per interview/survey	Estimated total burden (hours)
In-person Interviews:			
State Substance Abuse Prevention and Treatment Agency Commissioner	60	3	180
State Planners	60	3	180
State Data Analysts	60	3	180
State Prevention Lead	60	3	180
State Treatment Lead	60	3	180
Additional State Staff	60	3	180
Federal SAPT Block Grant Staff	35	1.5	52.5
Subtotal	395		1,132
Web-based Interviews:			
Technical Reviewers	15	1	15
State Prevention and Synar System Reviewers	30	1	30
Subtotal	45		45
Total	440		1,177

This **Federal Register** Notice is focused on the interviews and surveys that will be administered to the SAPT BG stakeholders as those methods of data collection require OMB approval. It is anticipated that in future independent evaluations of the SAPT BG Program focus will be given to the NOMs and their implications for program performance and goals.

Written comments and recommendations concerning the proposed information collection should be sent by October 22, 2007 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: September 12, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E7–18555 Filed 9–19–07; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2006–24191; USCG–2007–27415]

Transportation Worker Identity Credential (TWIC) Biometric Reader Specification and TWIC Contactless Smart Card Application

AGENCY: Transportation Security Administration; United States Coast Guard; DHS.

ACTION: Notice of availability.

SUMMARY: The Department of Homeland Security, through the U.S. Coast Guard (Coast Guard) and the Transportation Security Administration (TSA), announces the availability of the

working specification for Transportation Worker Identification Credential (TWIC) biometric readers and the TWIC contactless smart card application. This specification is based on recommendations to the Coast Guard and TSA from the National Maritime Security Advisory Committee (NMSAC); comments from the public following publication of the NMSAC recommendations and request for comment; and, the government's review of the NMSAC recommendations and comments received. The working specification is available to review at *www.tsa.gov/twic* and at *http://dms.dot.gov* in docket USCG–2007–27415.

DATES: The reader specifications and card application are available September 20, 2007.

FOR FURTHER INFORMATION CONTACT: John Schwartz, Office of Transportation Threat Assessment and Credentialing (TSA–19), Transportation Worker Identification Credential Program Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–2177; facsimile (703) 603–0409; e-mail *john.schwartz@dhs.gov.*

Reviewing Comments and the TWIC Working Technology Specification in the Docket

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

You may review the comments in the public docket by visiting the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is located in the West Building Ground Floor, Room W12–140, at the Department of Transportation address, previously provided under **ADDRESSES.** Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

Availability of Document

You can get an electronic copy of this Notice and the actual working specifications using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html* (Notice only); or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this action.

I. Background

The National Maritime Security Advisory Council (NMSAC) was created pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (FACA) in 2003. The membership of NMSAC, which includes 21 voting members, was selected to represent a broad range of viewpoints regarding maritime security challenges and to advise the Secretary of Homeland Security through the Commandant of the Coast Guard of relevant maritime security issues.

At the NMSAC meeting of November 14, 2006, the Coast Guard and TSA asked NMSAC to provide advice on a contactless biometric smart card application and reader specification for TWIC by February 28, 2007, taking into account expertise from the biometric credentialing industry and maritime/TWIC industry stakeholders. The specification is necessary for biometric readers and the TWICs that will be issued to individuals in the initial rollout of the TWIC program, beginning in the fall of 2007, and that will be used in pilot programs required by the Security and Accountability for Every Port Act of 2006 (SAFE Port Act).[1]

TSA and Coast Guard provided NMSAC the following baseline requirements for the specification:

1. Be non-proprietary;
2. Incorporate appropriate security and privacy controls;
3. Be interoperable with FIPS 201–1 credential specifications;
4. Be capable of serving as a platform for future capabilities;
5. Be capable of supporting maritime operations; and
6. Be suitable for manufacturing.

TSA and Coast Guard recommended that the task be addressed by dividing responsibilities to construct operational maritime requirements and technology specifications. We recommended that members of the maritime industry develop operational maritime requirements and address credential authentication (*e.g.* authentication time and process, and alternate authentication procedures) requirements; durability requirements; and credential management procedures, including key management. We recommended that the biometric credentialing experts develop technology specifications, including a smart card, reader, and keying specifications.

In the course of our discussions with NMSAC, members of the committee stated that they did not wish to recommend a specification that included encryption of the biometric and corresponding processes to decrypt the biometric when the card engages the reader. Many of the NMSAC members asserted that encryption was not necessary because the biometric—a fingerprint minutiae template, rather than an actual fingerprint—should not require the added protection that encryption provides. Also, members of NMSAC did not want to take on the additional responsibility of key management, which would be necessary if the recommended specification included encryption. However, TSA and Coast Guard disagreed with NMSAC's suggestion that the fingerprint template does not need to be encrypted and therefore asked NMSAC to provide one specification with encryption of the biometric and a corresponding process to decrypt the biometric when the card engages the reader. The formal request from the TWIC program to NMSAC is available at the following URL: *http://homeport.uscg.mil,* and in the docket for this notice.

On March 1, 2007, the Coast Guard received NMSAC's report, entitled ''Recommendations on Developing a Contactless Biometric Specification for the TWIC.'' The report included two specifications. The first recommended specification, preferred by NMSAC for the reasons discussed in the paragraph above, does not provide for encryption of the TWIC cardholder's biometric fingerprint minutiae template. Without encryption, the template is transmitted in the clear and could be read by a third party whenever the card is energized by a contactless reader. Therefore, there is a risk that the template on the TWIC could be read without the knowledge or overt action of the cardholder.

NMSAC's second specification includes encryption of the biometric fingerprint minutiae template, which will protect the template from being decrypted unless information on the card's magnetic stripe or contact integrated circuit chip (ICC), is also provided to the reader. The information on the card's magnetic strip (or ICC) is needed to decrypt the template, which is obtained contactlessly from the card.

[1] Pub. L. 109–347; October 13, 2006.

This method of encryption protects the template from being read even if it is obtained covertly since the information on the card's magnetic stripe (or ICC) cannot be obtained without physical possession of the card. If a TWIC is physically obtained by someone other than the rightful owner, the information necessary to obtain and decrypt the template would be available to them.

Note that each TWIC will contain three magnetic stripes and the first is reserved exclusively for TSA's use to store encryption information. Owner/operators may use the remaining two magnetic stripes for information that facilitates the use of local access control systems so long as doing so does not interfere with the information encoded by TSA on the first magnetic stripe that allows contactless operation of the TWIC. Technical specifications for the magnetic stripe and areas reserved for TSA use are contained in the TWIC contactless card and reader working specification.

In March 2007, the Coast Guard published a Notice of Availability of the NMSAC Recommendations and requested comments from all interested parties. (72 FR 12626, March 16, 2007.) In addition to requesting general comments, Coast Guard asked the public to respond to specific questions, including: (1) Whether the use of a Personal Identification Number (PIN) is justified to further minimize the chance that a fingerprint template from a lost or stolen credential could be obtained by an unauthorized individual; (2) what, if any, privacy concerns exist if the fingerprint template is obtained by an unauthorized individual; (3) how the recommended specifications impact maritime security and operations; (4) how the recommended specifications impact existing physical access control systems (PACS); (5) whether TSA and Coast Guard should consider alternative designs; (6) how the recommended specifications impact product, system, and operational costs; (7) how quickly the recommended specifications could be incorporated into the design and manufacture of access control equipment; and (8) whether there should be a qualified products list (QPL) or equivalent regime.

Over thirty separate entities submitted comments to these questions. The majority of commenters represented the maritime industry, but several technology companies and trade associations also responded. Generally, the commenters praised the work of the NMSAC TWIC Contactless Specification Workgroup. TSA and Coast Guard agree that NMSAC delivered excellent recommendations in a very short time-frame, and we greatly appreciate NMSAC's efforts in this important security endeavor. In the following section, we summarize all comments received.

II. Summary of Comments

Question 1—Additional Security Features

Commenters generally agreed that the additional security feature mentioned, a PIN, was not a good idea for general use due to operational concerns. Others stated that a PIN should be considered only if it could be used in a way that does not adversely impact maritime operations. Many commenters stated that TWIC holders would likely forget their PINs, which would become burdensome to TWIC users and maritime operations. As for PIN length, the few who commented prefer a 4-digit PIN over a longer PIN.

Only one commenter discussed an alternative security feature—the use of a smart card holder that protects information stored on the card's integrated circuit chip until the holder is activated by the card holder's live biometric. At least one commenter suggested that to help deter fraudulent use of the TWIC, fingerprint scanners associated with card readers should be able to confirm that the fingerprint being presented is that of a live person rather than an artificial replica of a fingerprint or fingerprint template. This capability is called ''liveness'' detection.

Question 2—Privacy Concerns

Most commenters from the maritime industry stated that maintaining the privacy of the information stored on the card is important, but they do not believe additional measures are necessary to protect the privacy of biometric fingerprint templates. However, commenters from the technology industry generally asserted that biometric fingerprint templates should be protected, and that the TWIC Privacy Key (TPK) scheme provided in NMSAC's alternative recommended specification is sufficient to protect the template.

Question 3—Vessel and Facility Security Operations

A number of maritime commenters stated that use of a PIN and TPK card swipe scheme, and, encryption of the fingerprint biometric template have the potential to adversely impact port and facility operations. Specifically, commenters expressed concern about error rates that might impact gate throughput, particularly during times of high-volume access; and, the effect of requiring the use of both PINs and biometrics at certain Maritime Security (MARSEC) levels. Commenters also mentioned that the upcoming TWIC pilot program that TSA and Coast Guard are implementing to test card and reader interaction will be helpful in identifying impacts on facility and vessel operations.

Question 4—Impacts on Existing Physical Access Control Systems

Commenters generally agreed that the TWIC program will have a significant impact on existing PACS if the two are integrated and will be duplicative if they are not. They cited the need for replacing or enhancing existing systems; additional trenching and related construction activities; and, installing or upgrading electrical power supplies and wiring to readers as examples of the impacts TWIC will have on existing PACS. Some commenters mentioned that the use of TPK would impact legacy PACS by requiring the modification or replacement of existing readers to include a magnetic stripe reading capability. Some commenters expressed concern that multiple credentials may be required of certain workers at certain locations and that multiple credentials would have to be processed to allow entry. Several commenters asserted that the cost of integration should be supported by Federal grant funding. One commenter suggested that TWIC PACS requirements should have a long phase-in period to allow facilities to use legacy equipment through the end of its useful life.

Question 5—Alternative Designs

Commenters mentioned that any alternative designs should be evaluated in the context of the maritime operating requirements established by the NMSAC working group. Several commenters suggested that the short time period allotted for development of the technical specification may have prevented alternative designs from emerging. However, a technology industry commenter stated that alternatives were considered and rejected by the technology team during their deliberations. The commenter stated that the following alternative designs were considered and rejected:

1. Shared Symmetric Keys

Key management is operationally complex and exposure of the key would have a negative impact on the entire TWIC system. Shared symmetric keys rely on one secret key to be distributed among all readers and cards to establish secure communications between card and reader. Keys must be changed

regularly, and securely distributed and stored to maintain system security. Secure key management would be difficult to accomplish due to the number and dispersion of TWIC readers.

2. Public Key Infrastructure (PKI)

In a PKI system, secure communication and authentication are done using public key certificates which require online communication. The fragmented TWIC PACS would lack the real-time network access required of a PKI system.

3. Biometric Match-on-Card (MOC)

MOC involves matching a biometric sample against a reference biometric template stored inside the secure environment of a smart card. The reference template cannot be read outside of the card, but is only used internally by the matching process inside the smart card. MOC is a relatively new approach within the smart card and biometrics industries and provides a good level of security and privacy. This is because the user's biometric information is protected by the smart card and is never released from the card. Internal to the smart card, MOC matches the user's live biometric template provided by an external biometric reader with the user's stored reference template. A major advantage to MOC over other approaches is that the card never releases personally identifying information (the biometric template) to the reader. Thus, the biometric could not be lifted or ''skimmed'' by an unauthorized individual. Also, under the MOC process, the need for reader authentication and associated reader key management is minimized because the reader only stores public keys that do not need to be protected from disclosure by using a Secure Access Module (SAM) to store secret keys to identify a particular smart card. With MOC, the transmission of the biometric template from the reader to the card is done using the public key and can only be decrypted using the private key that is stored securely on the smart card. For all of these reasons, MOC is a very promising technology to pursue. However, it has not been fully tested in a variety of laboratory or field settings and currently, there are no approved MOC standards. Therefore, we have determined that it would not be advisable to implement MOC for the upcoming TWIC rollout. We will continue to follow the development of MOC and if it matures for operational use, we will again consider its use in the maritime environment.

One commenter requested that the distance between the card reader and the card be increased from four to 18 inches to allow truck drivers to remain in their cabs while their TWICs are read. Some commenters reiterated their view that the specification should not include encryption in any form.

Question 6—Cost Impacts

A number of commenters reiterated their endorsement of NMSAC's non-encryption recommendation to minimize costs. Commenters who operate existing PACS expressed concern about integrating TWIC into their operation, particularly if encryption of the biometric is required and if wiring upgrades are necessary to support TWIC readers. Commenters who do not have PACS now expressed concern about how much it will cost to purchase, install, and maintain TWIC systems.

Question 7—Incorporation of TWIC Into Existing Access Control Equipment

Maritime industry commenters generally deferred this question to the technical experts. Technical commenters stated that the specifications TSA and Coast Guard choose for the TWIC program will determine the ease of design, manufacture, and integration. They also stated that knowledge gained through experience with designs for other PACS that share common attributes with TWIC will lessen the time needed to create TWIC PACS products. Conversely, features that are unique to TWIC will have to be created, but some commenters believe TWIC-unique features can be accommodated through software or firmware (*i.e.*, computer programming instructions that are stored in a read-only memory unit rather than being implemented through software) applications for existing readers. The commenters estimate that it may take from only a few months up to 36 months to integrate TWIC with certain PACS designs.

Question 8—Quality Products List Process & Creation

Almost universally, commenters agreed that TSA and Coast Guard should use a QPL process to help stakeholders know what equipment is best for use in the maritime environment. Many commented that the process the U.S. General Services Administration uses should be considered as a starting point for development of a TWIC QPL. Commenters also stated that product testing should include harsh maritime conditions.

III. Working Specification Selected

A. Summary of Selection

TSA and the Coast Guard have selected the NMSAC alternate recommendation that requires encryption and use of the TWIC Privacy Key (TPK) as the working specification for readers that will be used during the pilot programs. If the readers that meet this working specification perform as planned during the pilot testing, we will finalize the specification as we complete the rulemaking that requires the use of readers. Also, it is important to note that the TWICs that will be issued this fall in the initial rollout of the TWIC program will operate as designed when engaged in readers that are built to this working specification.

We are choosing to adopt this specification to protect the personally identifiable information (PII) contained in the TWIC from unintended disclosure while the TWIC is in the possession of the credential's rightful owner. Even assuming individuals suffer no real injury today if their template is taken or lifted through an unauthorized process, the template is personal information connected to that individual. Using a fingerprint template in lieu of a fingerprint image does not necessarily prevent the long-term potential for unauthorized use of personally identifying fingerprint information, if intercepted by unauthorized persons. Even assuming the fingerprint template cannot be reverse-engineered to produce an accurate duplicate fingerprint today, we cannot be certain that such a capability will not arise in the future. With the use of the TPK model, security and privacy protection are provided without the burden that other encryption models would place on PACS owners and operators.

TSA and Coast Guard take the industry's concerns about adverse operational impacts very seriously. Consequently, as the card and readers are envisioned to operate when TWIC is fully implemented, use of a PIN will not be necessary to release the biometric unless the owner/operator chooses to use contact readers and the contact side of the credential. In addition, we are in the process of finalizing plans for the pilot tests required by the SAFE Port Act and we are working with experts within DHS to establish a very thorough test plan to evaluate the card-reader interface under a variety of conditions and assess its impact on operations. Through the pilot tests, we will investigate the impacts of requiring biometric identity verification on business processes, technology, and operations on facilities and vessels of

various size, type, and location. As detailed below, while the government has removed any specific language about MARSEC levels from the specifications, the pilot testing process will be used to evaluate various use case scenarios that will influence the upcoming TWIC reader rulemaking process, including TWIC card and reader use requirements at various MARSEC levels.

We understand that the decision to implement the TPK model for contactless biometric identity verification will have impacts on the installed base of PACS systems. However, the TPK model allows facilities to integrate the model with their local PACS in several different ways. The TPK model allows use of: (1) The magnetic stripe to transfer TPK information by swiping the card through a magnetic strip reader and then presenting the card to a contactless reader to securely transmit the biometric template; (2) pre-registration of the information on the magnetic stripe into the local PACS and then presenting the card to a contactless reader; or (3) pre-registering the biometric minutiae templates into the local PACS until retrieved upon presentation of the TWIC to a contactless reader. The TPK model also allows several options for handheld readers. Handheld reader options include the use of either the contact or contactless portion of the TWIC to enable biometric identity verification.

We do not wish to implement any alternative designs at this time. However, we may add additional security features to the card or card reader with due notice to the industry and regard for operational impacts. One alternative technology of particular interest to the government is match-on-card (MOC) technology. The TWIC program and Coast Guard remain in close contact with the National Institute of Standards and Technology (NIST) in their consideration of MOC technology for various Federal smart card and personal identification initiatives.

We are mindful that cost is a strong consideration in the operational implementation of TWIC and we are working to minimize costs on the operational users of TWIC where possible. Also, we are working closely with other DHS components to continue to make available Port Security Grant funds to mitigate some of the costs to vessel and facility operators and owners of implementing the TWIC program.

We have worked closely with the NMSAC working group to understand the impacts of the TWIC program on the maritime sector. Our choice of the TPK model is grounded in the specific recommendation of smart card, PACS, and biometrics industry experts involved in the NMSAC working group process and a thorough review of technology choices and impacts by government experts. These experts leveraged other similar technologies from contactless identification regimes in their deliberations. While implementation of the TWIC program should be as timely as possible, we understand that technical implementation timelines must incorporate engineering and manufacturing time, field testing, facility adaptation, and final field installation.

We are encouraged by the positive responses we received regarding the creation of a QPL. However, unlike other government smart card programs, TWIC card readers, in most cases, will not be procured by the government. This lessens the ability of the government to leverage existing QPL-type programs already in existence, such as those supporting the Homeland Security Presidential Directive (HSPD)—12 Personal Identity Verification (PIV) Program.

B. Technical Changes to the TPK Working Specification

TSA and Coast Guard are making some technical modifications to the TPK working specification recommended by NMSAC. We believe these changes are necessary to further protect privacy and security for the TWIC program. There are four important changes involving verification of the cardholder unique identifier (CHUID) data, MARSEC level operations, biometric liveness detection, and contactless transmission speed that are discussed in detail below. In addition, we made minor changes to the specification that is discussed below.

B.1. Signature Verification of CHUID Data

The NMSAC specification recommends that verification of the signature on the CHUID be optional. However, regardless of whether the credential is digitally signed, CHUID data can be copied or ''cloned'' to another card. Signature verification mitigates counterfeited CHUID data from being accepted as authentic. For this reason, verification of the digital signature on any CHUID unknown to a PACS is mandatory and is included in the final specification. Signature verification will have minimal performance impact to the contactless transaction and minimal impact on reader implementation.

B.2. Authentication Methods Used at MARSEC Levels:

NMSAC recommended that CHUID authentication should be used at MARSEC 1 and biometric authentication should be used at MARSEC 2. Specifying authentication methods for various threat or risk levels is outside of the scope of a technical specification for contactless cards and readers, and is more appropriately addressed separately in the risk management and security requirements for maritime operators. Therefore, we have removed the MARSEC guidance relating to use of specific authentication levels at different MARSEC levels from the working specification.

B.3. Biometric Liveness Detection

NMSAC recommended that biometric liveness detection *may* be employed in TWIC readers, making liveness detection optional. Liveness detection is an important means to prevent spoofing of a biometric sensor and is generally something that is strongly recommended by the reader industry. Because standards for liveness detection are currently not available, and there is no conformance testing protocol to validate its effectiveness, it is difficult to specify liveness detection as a mandatory requirement. However, we have changed the language for liveness detection from *may* to *should,* to stress that liveness detection (or attended verification) in TWIC readers is a highly desirable feature. This change will have no operational impact on TWIC contactless transactions.

B.4. Contactless Transmission Speed

The contactless reader performance requirements in the NMSAC specification are based upon transaction completion time. We have determined that specific requirements for contactless transmission speed should be specified so that the reader will support negotiation of a contactless speed with the card that achieves at least 400K bits per second. This will minimize transaction timings based on transmission capabilities of both current and future TWIC card versions. This change will not adversely impact TWIC contactless transactions.

C. List of All Changes to the TPK Specification

Listed below is a complete list of the changes TSA and Coast Guard have made to the TPK specification that NMSAC recommended. The changes of interest are discussed in detail above in Section III.B.

1. Section 4, TWIC Modes of Operation. Requirement for specific

authentication modes to be used at specific MARSEC levels has been removed and available authentication modes have been clarified.

2. Section 4, TWIC Modes of Operation. Ability to configure specific authentication modes depending on a given perimeter security requirement and to be used at differing MARSEC levels has been added.

3. Section 4, TWIC Modes of Operation. Verification of CHUID signature changed to mandatory. CHUID signature is either verified once, either when the card holder's CHUID is registered in a local PACS, or read by the TWIC reader each time the card is presented for access.

4. Section 5.1.1, Device Dimensions. Note added to stress contactless reader sensitivity to location and electromagnetic conditions of their environment.

5. Section 6, Portable Reader Requirements. Requirements for confidentiality and authentication added for wireless devices used in physical access systems.

6. Section 7, Operational Requirements. Contactless transmission speed requirement changed to support 106kbit/s, 212kbit/s or 424kbit/s, based on the card's capabilities.

7. Section 7, Operational Requirements. Requirement added to reject transaction if multiple cards are simultaneously detected in the reader's contactless field.

8. Section 8, Performance Requirements. Support for biometric liveness detection strengthened from ''may'' to ''should'' indicating a strong preference for liveness detection.

9. Appendix A.1, CHUID Authentication. CHUID authentication clarified.

10. Appendix A.2, TWIC Biometric Authentication. Biometric authentication clarified.

11. Appendix A.3, Card Authentication Key Authentication. Card Authentication data object reference corrected.

12. Appendix A.3, Card Authentication Key Authentication. Card Authentication Key usage clarified to indicate that it is only available via the PIV application, and is not shared with the TWIC application.

13. Appendix D, TWIC Reader Compatibility with Other Card Types. Reader compatibility and default card support clarified and modified to allow configuration of default AID.

14. Appendix E.4, Alternate Implementations. Minor clarifications to PACS enrollment.

15. Appendix F, Proposed TWIC AID Structure. TSA RID added, AID structure clarified.

D. Future Changes to Specification

TSA and Coast Guard will continue to evaluate and test the working specification as we implement the TWIC Pilot Program. We anticipate that, as with any testing program, we will encounter technical issues that can be corrected by making minor changes to the working specification. We will make such changes available to the public as they occur, through use of the following link/Web site: *www.tsa.gov/twic.* In addition, we will address any necessary changes to the working specification prior to finalizing the regulations requiring TWIC readers.

Issued in Arlington, Virginia, on September 14, 2007.

Stephanie Rowe,

Assistant Administrator, Transportation Threat Assessment and Credentialing, Transportation Security Administration.

[FR Doc. 07–4649 Filed 9–19–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Automated Commercial Environment (ACE): National Customs Automation Program Test of Automated Truck Manifest for Truck Carrier Accounts; Deployment Schedule

AGENCY: Customs and Border Protection; Department of Homeland Security.

ACTION: General notice.

SUMMARY: Customs and Border Protection (CBP), in conjunction with the Department of Transportation, Federal Motor Carrier Safety Administration, is currently conducting a National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data. This document announces the final group, or cluster, of ports to be deployed for this test.

DATES: The ports identified in this notice, in the state of Alaska, are expected to be fully deployed for testing no earlier than August 30, 2007. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period to the contact listed below.

FOR FURTHER INFORMATION CONTACT: Mr. James Swanson via e-mail at *james.d.swanson@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data for truck carrier accounts was announced in a notice published in the **Federal Register** (69 FR 55167) on September 13, 2004. That notice stated that the test of the Automated Truck Manifest would be conducted in a phased approach, with primary deployment scheduled for no earlier than November 29, 2004.

A series of **Federal Register** notices have announced the implementation of the test, beginning with a notice published on May 31, 2005 (70 FR 30964). As described in that document, the deployment sites for the test have been phased in as clusters. The ports identified belonging to the first cluster were announced in the May 31, 2005 notice. Additional clusters were announced in subsequent notices published in the **Federal Register** including: 70 FR 43892, published on July 29, 2005; 70 FR 60096, published on October 14, 2005; 71 FR 3875, published on January 24, 2006; 71 FR 23941, published on April 25, 2006; 71 FR 42103, published on July 25, 2006; 71 FR 77404, published on December 26, 2006; 72 FR 5070, published on February 2, 2007; 72 FR 7058, published on February 14, 2007; 72 FR 14127, published on March 26, 2007; and 72 FR 32135, published on June 11, 2007.

New Cluster

Through this notice, CBP announces that the final cluster of ports to be brought up for purposes of deployment of the test, to be fully deployed no earlier than August 30, 2007, will be the following land border ports in the state of Alaska: Alcan, Dalton Cache, and Skagway. This group of ports is the last remaining group, nationwide, to be tested; the ACE truck manifest test will be complete once it is effectuated in Alaska.

This deployment is for purposes of the test of the transmission of automated truck manifest data only; the Automated Commercial Environment (ACE) Truck Manifest System is not yet the mandated transmission system for these ports. The ACE Truck Manifest System will become the mandatory transmission system in these ports only after publication in the **Federal Register** of 90 days notice, as explained by CBP in the **Federal Register** notice published on October 27, 2006 (71 FR 62922).

Previous NCAP Notices Not Concerning Deployment Schedules

On Monday, March 21, 2005, a notice was published in the **Federal Register**

(70 FR 13514) announcing a modification to the NCAP test to clarify that all relevant data elements are required to be submitted in the automated truck manifest submission. That notice did not announce any change to the deployment schedule and is not affected by publication of this notice. All requirements and aspects of the test, as set forth in the September 13, 2004 notice, as modified by the March 21, 2005 notice, continue to be applicable.

Dated: September 13, 2007.

Thomas S. Winkowski,

Assistant Commissioner, Office of Field Operations.

[FR Doc. E7–18527 Filed 9–19–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[USCBP–2006–0021; CBP Dec. 07–78]

Interpretive Rule Concerning Classification of Unisex Footwear

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Final interpretion.

SUMMARY: This document adopts as final, with minor changes, a proposed interpretive rule regarding the criteria to be used by U.S. Customs and Border Protection (''CBP'') to determine whether footwear is considered to be ''commonly worn by both sexes'' (unisex) for tariff classification purposes under Heading 6403 of the Harmonized Tariff Schedule of the United States (''HTSUS'') that was published in the **Federal Register** on July 24, 2006. The rates of duty applicable to footwear ''For other persons'' (i.e., ''unisex'') are about 1.5 percent higher than the rates of duty applicable to footwear ''For men, youths and boys.'' The criteria set forth in this document will promote uniformity in the classification of subject footwear, thereby ensuring that proper duties are collected.

DATES: *Effective Date:* October 22, 2007.

FOR FURTHER INFORMATION CONTACT: Alexandra (Sasha) Kalb, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 572–8791.

SUPPLEMENTARY INFORMATION:

Background

This document sets forth the criteria to be used by CBP to determine whether footwear should be considered ''unisex'' for tariff classification purposes. Chapter 64, HTSUS, covers footwear, gaiters and the like, and parts of such articles. Disparities in the duty rates applicable to some provisions under Heading 6403 in Chapter 64 are based on the gender of the user. Additional U.S. Note 1(b) and Statistical Note 1(b) to Chapter 64, HTSUS, provide that footwear ''for men, youths and boys'' covers footwear of certain men's and youths' sizes, not including unisex footwear (i.e., ''footwear commonly worn by both sexes''). Statistical Note 1(c) to Chapter 64, HTSUS, provides that footwear ''for women'' covers footwear of certain women's sizes, whether for females or of types commonly worn by both sexes (i.e., unisex). Elsewhere in the HTSUS (in subheadings 6403.99.75 and 6403.99.90, for example), footwear is classified as ''for other persons,'' a definition that also includes unisex footwear. The determination of whether footwear is classifiable as ''for men, youths and boys'' rather than ''for women'' or ''for other persons,'' therefore, often rests on whether the footwear is truly for men, youths and boys or is, in fact, unisex. The rates of duty applicable to footwear ''For other persons'' (i.e. unisex) are about 1.5 percent higher than the rates applicable to footwear ''For men, youths and boys.''

It is noted that many types of footwear may be, and in fact are, worn by both sexes. In addition, many types of shoes in male sizes do not feature physical characteristics to designate that the footwear is intended exclusively for males. The standards employed for purposes of determining whether footwear is considered unisex had been developed and applied by CBP on an ad hoc, case-by-case basis. This approach, while effective in individual cases, had provided only limited guidance to the importing community and to CBP officers with respect to other import transactions involving different factual circumstances.

Request From Public To Provide Enhanced Guidance

In a letter dated September 17, 1999, the footwear importing public, represented by the Footwear Distributors and Retailers of America (''FDRA''), requested that CBP take steps to provide enhanced guidance in determinations concerning unisex issues. The FDRA specifically requested that CBP set forth the criteria for determining whether footwear claimed to be ''for men, youths and boys'' is considered ''commonly worn by both sexes'' and therefore classifiable as footwear ''for other persons.'' The FDRA additionally requested that CBP ensure the uniform interpretation and application of those criteria by CBP field offices.

Preliminary Notice

After receiving the above-referenced letter, CBP published a general notice in the **Federal Register** (67 FR 18303) on April 15, 2002. In that document, CBP set forth its criteria for determining what constitutes unisex footwear for tariff classification purposes as well as the criteria proposed by the FDRA. In addition, CBP solicited comments on the appropriateness of the standards proposed by the FDRA and on the extent to which any standards followed by CBP in the past should be retained. Suggestions for alternative standards were also invited. Four comments were received in response to the preliminary notice.

Proposed Interpretive Rule

CBP published a proposed interpretive rule in the **Federal Register** (71 FR 41822) on July 24, 2006. In the proposed interpretive rule, CBP reiterated its traditional criteria for determining what constitutes unisex footwear, addressed the four comments received in response to the preliminary notice, and proposed new criteria for purposes of determining whether footwear should be considered unisex for tariff classification purposes. The criteria set forth by CBP in the proposed interpretive rule, to be applied in sequential order, are:

(1) Footwear in sizes for men, youths and boys will not be considered to be ''commonly worn by both sexes'' (i.e., ''unisex'') if marked ''MEN'S SIZE ____'', ''YOUTHS' SIZE ____'', or ''BOYS' SIZE ____''.

(2) Even if not marked as described in criterion 1, footwear in sizes for men, youths or boys will not be considered to be ''commonly worn by both sexes'' (i.e., ''unisex'') if:

a. The importer imports the same shoe for women and girls, or;

b. Evidence is provided in the form of marketing material, retail advertisements, or other convincing documentation demonstrating that the same shoe for women and girls is available in the U.S. marketplace.

(3) A style of footwear in sizes for males will not be presumed to be ''commonly worn by both sexes'' (i.e., ''unisex'') unless evidence of marketing establishes that at least one pair in four (25 percent) of that style is sold to and/or worn by females.

(4) A determination that footwear is ''commonly worn by both sexes'' will

trigger ''unisex'' classification treatment that is applicable to all sizes.

In addition to providing the proposed classification criteria set forth above, CBP solicited additional comments in the proposed interpretive rule. The prescribed public comment period closed on September 22, 2006.

Discussion of Comments

Three submissions were received in response to the solicitation of comments in the proposed interpretive rule. Two of the submissions were provided by a law firm on behalf of various footwear importers. A separate law firm, on behalf of a trade association consisting of footwear retailers, importers, and producers, provided the third submission. A description of the various comments contained in the submissions, and CBP's analysis related thereto, is set forth below.

Comment

A commenter indicated that criterion (1) Is ambiguous on a number of practical points and suggested amending it by permitting ''clear abbreviations'' to be used in the marking, as well as permitting marking on just one shoe per pair, and marking on stickers and hang tags instead of the shoes themselves. In addition, a commenter requested that CBP state the minimum form or manner of marking which footwear must have in order not to be considered ''commonly worn by both sexes'' under criterion (1).

CBP Response

CBP requires that the country of origin be marked on both shoes in a pair in order to ensure that the marking is conspicuous. The rationale behind this requirement is that a prospective purchaser may inspect and try on only one shoe for fit prior to purchase. Traditionally, size markings are also provided on both shoes in a pair. Accordingly, CBP requires that that the marking described under criterion (1) also be on both shoes in a pair. Since the country of origin already must appear on both shoes, and because sizes also traditionally appear on both shoes, we do not view this requirement as an undue burden to importers.

Certain kinds of footwear, usually inexpensive shoes sold in retail packages or bags, not the type that is usually tried on for fit prior to purchase, have been found to be legally marked by means of stickers or hang tags. CBP will also accept stickers or hang tags on this type of footwear as an indication that the footwear is not ''commonly worn by both sexes'' if the marking is sufficiently permanent, conspicuous, and legible to indicate the required information to the ultimate purchaser in the United States.

With respect to abbreviations, it is CBP's position that using ''YTH'' to indicate ''YOUTHS''' is acceptable. However, CBP finds that the required MEN'S or BOYS markings are already concise and that these markings do not lend themselves to abbreviation. Consequently, the use of abbreviations for these markings is unnecessary and unacceptable.

Thus, there are two possible methods for marking footwear under criterion (1) in order for such footwear not to be considered ''commonly worn by both sexes'' and trigger ''unisex'' classification.

The first acceptable marking under criterion (1) is: MEN'S SIZE ____, YOUTHS' SIZE ____ or BOYS' SIZE____.

Alternatively, the second acceptable marking under criterion (1) is: MEN'S SIZE ____, YTH SIZE ____, or BOYS' SIZE ____.

Comment

A commenter requested that a ''gender symbol'' be permitted to satisfy the marking mentioned in criterion (1).

CBP Response

If an importer chooses to mark footwear with gender symbols in addition to the marking in criterion (1), that will serve as further evidence that the footwear is ''not commonly worn by both sexes.'' However, gender symbols alone will not satisfy CBP that the footwear is ''not commonly worn by both sexes.''

Comment

A commenter stated that it understands that criterion (3) does not require an importer to conduct a market survey. Rather, the importer would make entry based on its marketing approach.

CBP Response

CBP does not require the importer to conduct a market survey. If the importer chooses not to mark imported footwear in the manner indicated in criterion (1) and no female version of the subject footwear is demonstrated to exist, and CBP determines that the footwear is the type ''commonly worn by both sexes,'' that footwear will be deemed ''unisex'' and entered accordingly. If an importer disagrees, CBP will consider a market survey, submitted by the importer, that establishes that at least one pair in four (25 percent) of the subject footwear is not sold to and/or worn by females.

Comment

A commenter requested that CBP clarify criterion 2(b) by defining or explaining the meaning of ''same'' shoe.

CBP Response

''Same'' shoe in the context of criterion 2(b) means either having the same style number or name with a female prefix or suffix to indicate gender or, if not having the same style number or name, made with the same materials, with the same features and value, and designed for the same purpose as the subject shoe.

Comment

A commenter stated that the final rule should clarify that marketing studies ''will be used sparingly at CBP's discretion'' and that conclusions made as a result of the marketing studies can be applied to unliquidated and future entries of footwear studied.

CBP Response

If the importer chooses not to mark imported footwear in the manner indicated in criterion (1) and no female version of the subject footwear is demonstrated to exist in the U.S. marketplace as indicated in criterion (2), and CBP determines that the footwear is the type ''commonly worn by both sexes,'' that footwear will be deemed ''unisex'' and entered accordingly. If an importer disagrees, CBP will consider market surveys, submitted by the importer, that establish that at least one pair in four (25 percent) of the subject footwear is not sold to and/or worn by females. Conclusions made as a result of the marketing studies will be applied to all entries of the subject footwear whose liquidation is not final.

Comment

A commenter recommended that the sequence of the criteria be revised so that criterion (3) appears first because ''if there is no evidence establishing that the footwear is sold to and/or worn by females, the remaining three standards do not come into play.''

CBP Response

Criterion (3) is a default rule which is to be implemented only when criterions (1) and (2) do not apply. Criterion (3) is only applicable in situations where the importer has not marked the imported footwear, no female version of the subject footwear is demonstrated to exist in the U.S. marketplace, and CBP determines that the footwear is the type ''commonly worn by both sexes.'' As a result, the sequence of the criteria cannot be revised so that default criterion (3) appears first.

Comment

A commenter requested that CBP make it clear that non-U.S. sizes and conversion charts will not be considered in determining whether footwear is deemed ''unisex'' and that size/gender labels are controlling.

CBP Response

CBP only requires that imported footwear bear country of origin markings. The marking of imported footwear as described in criterion (1) is entirely voluntary and is intended to assist CBP in the determination of whether or not footwear is ''commonly worn by both sexes.'' The size/gender label will generally be controlling.

Comment

A commenter stated that if criterion (2) is to have any practical meaning, it must be revised to permit a showing that comparable footwear is available in women's and girls' sizes.

CBP Response

CBP does not consider comparability to be relevant to the determination of whether a particular style is ''unisex.'' CBP will consider marketing material, retail advertisements, or other convincing documentation demonstrating that the same style of shoe is available in the U.S. marketplace.

Comment

A commenter recommended that CBP indicate that an importer may rely on the size designations, whether or not there is a gender indication, in classifying footwear at the statistical level.

CBP Response

Size designation alone will generally determine the classification of footwear unless the footwear is ''commonly worn by both sexes.''

Conclusion

Upon due consideration of the comments received, CBP has decided to adopt as final the proposed interpretive rule, which was published in the **Federal Register** (71 FR 41822) on July 24, 2006, with allowance made for the permitted abbreviation to criterion (1) and minor editorial changes to criterion (2). Specifically, in order to clarify the requirements under criterion (2), criteria 2(a) and 2(b) in the final interpretive rule will reference the ''same style of shoe'' as opposed to the ''same shoe''. Thus, the final interpretive rule with the minor changes is set forth below.

Final Interpretive Rule

The criteria to be utilized by CBP for determining whether footwear should be considered to be ''unisex'' under Heading 6403, HTSUS, are:

(1) Footwear in sizes for men, youths and boys will not be considered to be ''commonly worn by both sexes'' (i.e., ''unisex'') if marked ''MEN'S SIZE____'', ''YOUTHS' (or YTH) SIZE____'', or ''BOYS' SIZE____''.

(2) Even if not marked as described in criterion 1, footwear in sizes for men, youths or boys will not be considered to be ''commonly worn by both sexes'' (i.e., ''unisex'') if:

a. The importer imports the same style of shoe for women and girls, or;

b. Evidence is provided in the form of marketing material, retail advertisements, or other convincing documentation demonstrating that the same style of shoe for women and girls is available in the U.S. marketplace.

(3) A style of footwear in sizes for males will not be presumed to be ''commonly worn by both sexes'' (i.e., ''unisex'') unless evidence of marketing establishes that at least one pair in four (25 percent) of that style is sold to and/or worn by females.

(4) A determination that footwear is ''commonly worn by both sexes'' will trigger ''unisex'' classification treatment that is applicable to all sizes.

Dated: September 17, 2007.

W. Ralph Basham,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. E7–18588 Filed 9–19–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–83]

Notice of Submission of Proposed Information Collection to OMB; Mortgage Record Change

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

FHA-approved mortgagees report to HUD the sale of a mortgage between investors, the transfer of the mortgage servicing responsibility, or a change in mortgagors, as appropriate. HUD requires this information to assure accuracy in the fee and premium billing programs under HUD–FHA's automatic data processing system. HUD uses the information to process premium payments and to process claims.

DATES: *Comments Due Date:* October 22, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0422) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Mortgage Record Change.

OMB Approval Number: 2502–0422.

Form Numbers: HUD–92080.

Description of the Need for the Information and its Proposed Use: FHA-approved mortgagees report to HUD the sale of a mortgage between investors,

the transfer of the mortgage servicing responsibility, or a change in mortgagors, as appropriate. HUD requires this information to assure accuracy in the fee and premium billing programs under HUD–FHA's automatic data processing system. HUD uses the information to process premium payments and to process claims.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	2,600	615.4	....	0.1	.....	160.025

Total Estimated Burden Hours: 160.025.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 14, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–18533 Filed 9–19–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–84]

Notice of Submission of Proposed Information Collection to OMB; HUD Conditional Commitment/Direct Endorsement Statement of Appraised Value

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information is used by appraisers and/or underwriters upon their review of the appraisal report (URAR) to determine if a property meets FHA guidelines to be eligible for HUD mortgage insurance. Underwriters are required to sign and submit a copy of the completed form to HUD for endorsement as part of the case binder; to provide a copy to the homebuyer; and to maintain a copy for the mortgagee.

DATES: *Comments Due Date:* October 22, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0494) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: HUD Conditional Commitment/Direct Endorsement Statement of Appraised Value.

OMB Approval Number: 2502–0494.

Form Numbers: HUD–92800.5B.

Description of the Need for the Information and its Proposed Use: The information is used by appraisers and/or underwriters upon their review of the appraisal report (URAR) to determine if a property meets FHA guidelines to be eligible for HUD mortgage insurance. Underwriters are required to sign and submit a copy of the completed form to HUD for endorsement as part of the case binder; to provide a copy to the homebuyer; and to maintain a copy for the mortgagee.

Frequency Of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per reponse	=	Burden hours
Reporting Burden	8,000	75	....	.12	....	72,000

Total Estimated Burden Hours: 72,000.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 14, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–18534 Filed 9–19–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–85]

Notice of Submission of Proposed Information Collection to OMB; Survey of Market Absorption of New Apartment Buildings

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Department of Housing and Urban Development conducts this survey in order to determine if the supply of rental housing is keeping pace with current and future needs. Additional information such as asking rent (or price for condominium units) and number of bedrooms is also collected. We also ask the availability of services in ''assisted living'' buildings.

DATES: *Comments Due Date:* October 22, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0013) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Survey of Market Absorption of New Apartment Buildings.

OMB Approval Number: 2528–0013.

Form Numbers: H–31 (Questionnaire), SOMA–1 (Introductory Letter).

Description of the Need for the Information and its Proposed Use: The Department of Housing and Urban Development conducts this survey in order to determine if the supply of rental housing is keeping pace with current and future needs. Additional information such as asking rent (or price for condominium units) and number of bedrooms is also collected. We also ask the availability of services in ''assisted living'' buildings.

Frequency of Submission: Quarterly.

	Number of Respondents	Annual Responses	x	Hours per Response	=	Burden hours
Reporting Burden:	12,000	3	....	.116	....	4,200

Total Estimated Burden Hours: 4,200.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 14, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–18535 Filed 9–19–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5155–N–02]

Notice of FHA Debenture Call

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice announces a debenture recall of certain Federal Housing Administration (FHA) debentures, in accordance with authority provided in the National Housing Act.

FOR FURTHER INFORMATION CONTACT: Yong Sun, FHA Financial Reporting Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5148, Washington, DC 20410, telephone (202) 402–4778. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Pursuant to section 207(j) of the National Housing Act, 12 U.S.C. 1713(j), and in accordance with HUD's regulations at 24 CFR 207.259(e)(3), the Assistant Secretary for Housing-Federal Housing Commissioner, with the approval of the Secretary of HUD and the Secretary of the Treasury, announces the call of all FHA debentures, with a coupon rate of 6.25 percent or above, except for those debentures subject to ''debenture lock agreements,'' that have been registered on the books of the Bureau of Public Debt, Department of the Treasury, and are, therefore, ''outstanding'' as of September 30, 2007. The date of the call is January 1, 2008.

The debentures will be redeemed at par plus accrued interest. Interest will cease to accrue on the debentures as of the call date. At redemption, final interest on any called debentures will be paid along with the principal. Payment of final principal and interest due on January 1, 2008 will be made automatically to the registered holder.

During the period from the date of this notice to the call date, debentures that are subject to the call may not be used by the mortgagee for a special redemption purchase in payment of a mortgage insurance premium.

No transfer of debentures covered by the foregoing call will be made on the books maintained by the Treasury Department on or after December 14, 2007. This debenture call does not affect the right of the holder of a debenture to sell or assign the debenture on or after this date.

Dated: September 10, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E7–18525 Filed 9–19–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Richard Reid, Lee Reid and Redesign' Landscape Contractors, Inc.*, Civ. No. 06–1103, was lodged with the United States District Court for the Northern District of Illinois on September 13, 2007. This proposed Consent Decree concerns a complaint filed by the United States against Richard Reid, Lee Reid and Redesign' Landscape Contractors, Inc., pursuant to Section 301(a) of the Clean Water Act (''CWA''), 33 U.S.C. 1311(a), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to a pay a civil penalty. The Defendants have restored the impacted area.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Donald R. Lorenzen, United States Attorney's Office, 219 South Dearborn Street, 5th Floor, Chicago, Illinois 60604, and refer to *United States* v. *Richard Reid, Lee Reid and Redesign' Landscape Contractors, Inc.*, Civ. No. 06–1103.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Illinois, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/Consent_Decrees.html*.

Scott Schachter,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 07–4664 Filed 9–19–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Cercla

Notice is hereby given that on September 7, 2007, a proposed Consent Decree in *United States* v. *Bayer Healthcare LLC et al.,* Civil Action No. 2:07CV304 (TS), was lodged with the United States District Court for the Northern District of Indiana.

The proposed Consent Decree resolves the United States' claims for performance of response actions and recovery of response costs under sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9606(a) and 9607, against 31 parties that owned, operated or arranged for disposal of hazardous waste at the Himco Dump Superfund Site in Elkhart, Indiana. The Consent Decree requires Bayer Healthcare LLC, a legal successor to an entity that owned part of the Site and generated waste disposed of at the site and Himco Waste Away, Inc., which operated a landfill at the Site, to implement a remedial action selected by the U.S. Environmental Protection Agency, at an estimated cost of some $9,156,000. These entities, together with 29 former customers of the landfill, will also pay some $3,875,000 in past costs incurred by EPA in connection with the Site. The proposed Decree also provides for reimbursement of past costs incurred by the State of Indiana, which will be a co-plaintiff in the case.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcommentees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *Bayer Healthcare LLC et al.,* D.J. Reference No. 90–112–865/1.

The proposed Consent Decree may be examined at the Offices of the United States Attorney, 5400 Federal Plaza, Suite 1500, Hammond, IN 46320, and at U.S. EPA Region V, 77 West Jackson Boulevard, Chicago, IL 60604. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. When requesting a copy from the Consent Decree Library, please enclose a check in the amount of $51.75 for the Consent Decree (25 cents per page reproduction cost), payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–4646 Filed 9–19–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Randy Johnson*, Civ. No. 07–1048, was lodged with the United States District Court for the District of Minnesota on September 7, 2007. This proposed Consent Decree concerns a complaint filed by the United States against Randy Johnson, pursuant to section 301(a) of the Clean Water Act (''CWA''), 33 U.S.C. 1311(a), to obtain injunctive relief from and impose civil penalties against the Defendant for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the

Defendant to restore the impacted areas and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Patricia R. Cangemi, 600 U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415 and refer to *United States* v. *Randy Johnson*, Civ. No. 07–1048, DJ # 90–5–1–1–18123.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Minnesota, 202 U.S. Courthouse, 300 S. 4th Street, Minneapolis, MN 55415. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/Consent_Decree.html*.

Scott Schachter,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 07–4647 Filed 9–19–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice Of Public Comment Period for Proposed Clean Water Act Consent Decree

Under 28 CFR 50.7, notice is hereby given that, for a period of 30 days, the United States will receive public comments on a proposed Consent Decree in *United States* v. *The Meridian Resource & Exploration LLC et al.* (''Meridian Consent Decree'') (Civil Action No. 07–1482), which was lodged with the United States District Court for the Western District of Louisiana on September 6, 2007.

This proposed Consent Decree was lodged simultaneously with the Complaint in this Clean Water Act case against The Meridian Resource & Exploration LLC and Louisiana Onshore Properties LLC (collectively, ''Meridian''). The Complaint alleges that Meridian is civilly liable for violations of the Clean Water Act (''CWA''), 33 U.S.C. 1251 *et seq.,* as amended by the Oil Pollution Act of 1990 (''OPA''), 33 U.S.C. 2701 *et seq.* The Complaint seeks civil penalties and injunctive relief for five unauthorized discharges of crude oil into navigable waters of the United States or adjoining shorelines from Meridian's operations at the Weeks Island field in Iberia Parish, Louisiana. In particular, the Complaint alleges that approximately 747 barrels of crude oil were discharged from two pipelines and an oil well owned by Louisiana Onshore Properties LLC and operated by The Meridian Resource & Exploration LLC. The Discharges occurred between approximately November 2005 and November 1, 2006.

Under the settlement, Meridian will take a number of actions to enhance its efforts to inspect, monitor, maintain, and repair its Weeks Island facilities in order to prevent and respond more quickly to future unauthorized discharges. In addition, Meridian will pay a civil penalty of $504,000.

Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and may be submitted to: P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or via e-mail to *pubcomment-ees.enrd@usdoj.gov.* and should refer to *United States* v. *The Meridian Resource & Exploration LLC et al.,* D.J. Ref. 90–5–1–1–08993.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Louisiana, 800 Lafayette Street, Suite 2200, Lafayette, Louisiana 70501. During the public comment period the Meridian Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Meridian Consent Decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–4648 Filed 9–19–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 26, 2007 and published in the **Federal Register** on July 3, 2007 (72 FR 36480–36481), Applied Science Labs, Division of Alltech Associates Inc., 2701 Carolean Industrial Drive, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Heroin (9200)	I
Cocaine (9041)	II
Codeine (9050)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to import these controlled substances for the manufacture of reference standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Applied Science Labs to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Applied Science Labs to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: September 13, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–18501 Filed 9–19–07; 8:45 am]

BILLING CODE 4410–09–P

NUCLEAR REGULATORY COMMISSION

[EA–07–231 Docket Nos. 52–001, 52–003, 52–006, 52–010, and Project Nos. 0733 and 0751]

In the Matter of Westinghouse Electric Company, General Electric-Hitachi Nuclear Energy, Mitsubishi Nuclear Energy Systems, Inc., AREVA NP, and All Other Persons Who Seek or Obtain Access to Safeguards Information Described Herein; Order Imposing Safeguards Information Protection Requirements and Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information (Effective Immediately)

I

Westinghouse Electric Company, LLC. (WEC), holds certificates for the AP600 and AP1000 reactor designs issued by the U.S. Nuclear Regulatory Commission (NRC) in accordance with the Atomic Energy Act of 1954, as amended (AEA). General Electric–Hitachi Nuclear Energy (GEH) holds a certificate for the ABWR reactor designed and has submitted an application for design certification for the Economic and Simplified Boiling Water Reactor design in accordance with the AEA and Title 10, Part 52, ''Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants,'' of the *Code of Federal Regulations* (10 CFR Part 52), which the NRC staff is currently considering. Mitsubishi Nuclear Energy Systems, Inc. (Mitsubishi), and AREVA NP (AREVA) have both indicated to the NRC that they plan to submit applications for design certifications in the near future. WEC, GEH, Mitsubishi, and AREVA will be referred to herein as ''the affected vendors.''

The Commission has decided to require, through rulemaking, that nuclear power plant designers perform a rigorous assessment of design features that could provide additional inherent protection to avoid or mitigate the effects of a large commercial aircraft impact, while reducing or eliminating the need for operator actions, where practicable. In anticipation of this requirement, and to assist designers in completing this assessment, the Commission has decided to provide the detailed aircraft impact characteristics that should be used as reasonable inputs for reactor vendors and architect/engineers who have the need to know and who meet the NRC's requirements for the disclosure of such information to use in studies of the inherent capabilities of their designs. The NRC derived these characteristics from agency analyses performed on operating reactors to support, in part, the development of a broadly effective set of mitigation strategies to combat fires and explosions from a spectrum of hypothetical aircraft impacts. Although these detailed characteristics were not selected as a basis for designing new reactors, the staff is suggesting them as a starting point for aircraft impact assessments. As proposed by the Commission, the Commission would specify in a Safeguards Information guidance document the detailed aircraft impact characteristics that should be used in a required assessment of the new reactor designs. The agency will finalize the form and values of those detailed characteristics when completing the associated rulemaking. In addition, the staff recognizes that no national or international consensus has been reached on the selection of appropriate characteristics for such analyses. Therefore, the information should be considered preliminary and subject to authorized stakeholder comment. The detailed aircraft characteristics that are the subject of this Order are hereby designated as Safeguards Information (SGI),[1] in accordance with Section 147 of the AEA.

The NRC is issuing this Order to the affected vendors to impose requirements for the protection of SGI, as well as for the fingerprinting of all persons who have or seek access to this SGI. This Order supercedes EA–07–154, issued to WEC on June 8, 2007, and EA–07–159, issued to GEH, formerly General Electric Company (GE), on June 15, 2007. Except for the restrictions on storage of SGI and access to SGI by certain individuals, this Order is identical to the Orders previously issued to WEC and GEH. Therefore, since both vendors have already complied with those orders, WEC and GEH need only respond to this Order with an answer consenting to the Order pursuant to Section IV.

On August 8, 2005, Congress enacted the Energy Policy Act of 2005 (EPAct). Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is permitted to have access to SGI. The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAct fingerprinting and criminal history records check requirements for access to SGI were effective immediately upon enactment of the EPAct. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that the affected vendors can obtain and grant access to SGI. This Order also requires compliance with the safeguards protection measures set forth in 10 CFR 73.21, ''Requirements for the Protection of Safeguards Information,'' and imposes requirements for access to and protection of SGI by any person,[2] whether or not they are a licensee, applicant, or certificate holder of the Commission or an Agreement State.

To implement this Order, the affected vendors must nominate an individual who will review the results of the FBI criminal history records check to make SGI access determinations. This individual, referred to as the ''reviewing official,'' must be someone who seeks access to SGI. Based on the results of the FBI criminal history records check, the NRC staff will determine whether this individual may have access to SGI. If the NRC determines that the individual may not be granted access to SGI, the enclosed Order prohibits that individual from obtaining access to any SGI. Once the NRC approves a reviewing official, that reviewing official, and only that reviewing official, can make SGI access determinations for other individuals who have been identified by the affected vendors as having a need to know SGI, and who have been fingerprinted and have had a criminal history records check in accordance with this Order. The reviewing official can only make SGI access determinations for other individuals, but cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official. Therefore, if the affected vendors wish to have a new or additional reviewing official, the NRC must approve that individual before he or she can act in the capacity of a reviewing official.

[1] SGI is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under Section 147 of the AEA.

[2] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, (except that the Department of Energy shall be considered a person with respect to those facilities of the Department of Energy specified in Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244)), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

Certain categories of individuals are relieved by rule from the fingerprinting requirements pursuant to 10 CFR 73.59, ''Relief from Fingerprinting and Criminal History Records Check for Designated Categories of Individuals.'' Those individuals include: Federal, State, and local law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress; certain employees of members of Congress or congressional committees who have undergone fingerprinting for a prior U.S. Government criminal history check; and representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, individuals who have had a favorably-decided U.S. Government criminal history check within the last 5 years, or individuals who have active Federal security clearances (provided in either case that they make available the appropriate documentation), have already been subjected to fingerprinting and criminal history checks and, thus, have satisfied the EPAct fingerprinting requirement.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders, as necessary, to prohibit the unauthorized disclosure of SGI. Furthermore, as discussed above, Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, no person may have access to SGI unless the person has an established need to know.

To provide assurance that the affected vendors are continuing to implement appropriate measures to ensure a consistent level of protection to prohibit unauthorized disclosure of SGI, and to comply with the fingerprinting and criminal history records check requirements for access to SGI, the affected vendors shall implement the requirements for the protection of SGI as set forth in 10 CFR 73.21 and this Order. In addition, pursuant to 10 CFR 2.202, ''Orders,'' I find that in light of the matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 147, 149, 161b, 161i, 161o, 182, and 186 of the AEA of 1954 as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 73, ''Physical Protection of Plants and Materials,'' *it is hereby ordered, effective immediately, that the affected vendors and all other persons who seek or obtain access to safeguards information as described herein shall comply with the requirements set forth in 10 CFR 73.21 and this order.*

A. 1. No person may have access to SGI unless that person has a need to know the SGI, has been fingerprinted and undergone an FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from the requirement by 10 CFR 73.59, who has had a favorably decided U.S. Government criminal history check within the last 5 years, or who has an active Federal security clearance, provided in the latter two cases that the affected vendor's NRC-approved reviewing official has documented the existence of an active clearance or the basis for relief.

2. No person may have access to any SGI if the NRC, when making an SGI access determination for a nominated reviewing official, has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person nominated may not have access to SGI.

3. The affected vendor shall store SGI designated by this Order only in the facility or facilities specifically approved in writing by the NRC for storage of SGI designated by this Order. The affected vendor may request, in writing, NRC approval of additional facilities for the storage of the SGI designated by this Order that the NRC will consider on a case-by-case basis.

4. The affected vendor may provide SGI designated by this Order to individuals (such as foreign nationals, U.S. citizens living in foreign countries, or individuals under the age of 18) for whom fingerprinting and an FBI criminal history records check is not reasonably expected to yield sufficient criminal history information to form the basis of an informed decision on granting access to SGI, provided that the individual satisfies the requirements of this Order, and that the affected vendor has implemented measures, in addition to those set forth in this Order, to ensure that the individual is suitable for access to the SGI designated by this Order. Such additional measures must include, but are not limited to, equivalent criminal history records checks conducted by a local, State, or foreign governmental agency, and/or enhanced background checks including employment and credit history. The NRC must review these additional measures and approve them in writing.

B. No person may provide SGI to any other person except in accordance with Condition III.A. above. Before providing SGI to any person, a copy of this Order shall be provided to that person.

C. Each of the affected vendors shall comply with the following requirements:

1. The affected vendor shall, within 20 days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of 10 CFR 73.21 and the attachment to this Order.

2. The affected vendor shall, within 20 days of the date of this Order, submit the fingerprints of one individual whom (a) the affected vendor nominates as the ''reviewing official'' for determining access to SGI by other individuals and (b) has an established need to know the information. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as the affected vendor's reviewing official.[3] The affected vendor may, at the same time or later, submit the fingerprints of other individuals to whom the affected vendor seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the attachment to this Order.

3. The affected vendor may allow any individual who currently has access to SGI to continue to have access to previously-designated SGI without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting and an FBI criminal history records check) that the individual may continue to have access to SGI. The affected vendor shall make determinations on continued access to SGI within 90 days of the date of this Order, in part, based on the results of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.

4. The affected vendor shall, in writing, within 20 days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in the Order, including the attachment; or (2) if

[3] The NRC's determination of this individual's access to SGI in accordance with the process described in Enclosure 3 to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide the affected vendor's justification for seeking relief from, or variation of, any specific requirement.

The affected vendors shall submit responses to C.1., C.2., C.3, and C.4 above to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, the affected vendors shall mark their responses as ''Security-Related Information—Withhold Under 10 CFR 2.390.''

The Director, Office of New Reactors, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the affected vendor.

IV

In accordance with 10 CFR 2.202, the affected vendor must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing with regard to this Order, within 20 days of the date of this Order. Where good cause is shown, the NRC will consider extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law by which the affected vendor or other entities adversely affected rely, and the reasons as to why the NRC should not have issued this Order. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the affected vendor, if the answer or hearing request is by an entity other than the affected vendor. Because of possible delays in delivery of mail to U.S. Government offices, the agency asks that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to (301) 415–1101 or via 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 via e-mail to *OGCMailCenter@nrc.gov*. If an entity other than the affected vendor requests a hearing, that entity shall set forth, with particularity, the manner in which this Order adversely affects its interest and shall address the criteria set forth in 10 CFR 2.309, ''Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions.''

If the affected vendor, or a person whose interest is adversely affected, requests a hearing, 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 affected vendor 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 grounds 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 as specified above in Section III shall be final 20 days from the date of this Order without, further order or proceedings. If the agency approves an extension of time for requesting a hearing, the provisions, as specified above in Section III, 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 12th day of September, 2007.

* * * * *

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Director, Office of New Reactors.

Enclosure 3—Process To Challenge NRC Denials or Revocations of Access to Safeguards Information

1. Policy

This policy establishes a process for individuals whom the Nuclear Regulatory Commission (NRC) licensees or other person [1] nominate as reviewing officials to challenge and appeal NRC denials or revocations of access to Safeguards Information (SGI). Any individual nominated as a licensee reviewing official whom the NRC has determined may not have access to SGI shall, to the extent provided below, be afforded an opportunity to challenge and appeal the NRC's determination. This policy shall not be construed to require the disclosure of SGI to any person, nor shall it be construed to create a liberty or property interest of any kind in the access of any individual to SGI.

2. Applicability

This policy applies solely to those employees of licensees who are nominated as a reviewing official, and who are thus considered, by the NRC, for initial or continued access to SGI in that position.

3. SGI Access Determination Criteria

Determinations for granting a nominated reviewing official access to SGI will be made by the NRC staff. Access to SGI shall be denied or revoked whenever it is determined that an individual does not meet the applicable standards. Any doubt about an individual's eligibility for initial or continued access to SGI shall be resolved in favor of the national security and access will be denied or revoked.

4. Procedures To Challenge the Contents of Records Obtained From the FBI

a. Prior to a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall:

(i) Be provided the contents of records obtained from the FBI for the purpose of assuring correct and complete information. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation, Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI will forward the challenge to the agency that submitted the data and request that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original

[1] As used herein, ''licensee'' means any licensee or other person who is required to conduct fingerprinting.

information, the FBI Identification Division makes any necessary changes in accordance with the information supplied by that agency.

(ii) Be afforded ten (10) days to initiate an action challenging the results of an FBI criminal history records check (described in (I), above) after the record is made available for the individual's review. If such a challenge is initiated, the NRC Facilities Security Branch Chief may make a determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record.

5. Procedures To Provide Additional Information

a. Prior to a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall:

(i) Be afforded an opportunity to submit information relevant to the individual's trustworthiness and reliability. The NRC Facilities Security Branch Chief shall, in writing, notify the individual of this opportunity, and any deadlines for submitting this information. The NRC Facilities Security Branch Chief may make a determination of access to SGI only upon receipt of the additional information submitted by the individual, or, if no such information is submitted, when the deadline to submit such information has passed.

6. Procedures To Notify an Individual of the NRC Facilities Security Branch Chief Determination To Deny or Revoke Access to SGI

a. Upon a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall be provided a written explanation of the basis for this determination.

7. Procedures To Appeal an NRC Determination To Deny or Revoke Access to SGI

a. Upon a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall be afforded an opportunity to appeal this determination to the Director, Division of Facilities and Security. The determination must be appealed within twenty (20) days of receipt of the written notice of the determination by the Facilities Security Branch Chief, and may either be in writing or in person. Any appeal made in person shall take place at the NRC's headquarters, and shall be at the individual's own expense. The determination by the Director, Division of Facilities and Security, shall be rendered within sixty (60) days after receipt of the appeal.

8. Procedures To Notify an Individual of the Determination by the Director, Division of Facilities and Security, Upon an Appeal

a. A determination by the Director, Division of Facilities and Security, shall be provided to the individual in writing, and include an explanation of the basis for this determination. A determination by the Director, Division of Facilities and Security, to affirm the Facilities Branch Chief's determination to deny or revoke an individual's access to SGI is final and not subject to further administrative appeals.

Attachment—Requirements for Fingerprinting and Criminal History Records Checks of Individuals When a Reviewing Official Is Determining Access to Safeguards Information

General Requirements

Licensees and other persons who are required to conduct fingerprinting shall comply with the requirements of this attachment.[2]

A. 1. Each licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has a favorably-decided U.S. Government criminal history records check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the criminal history records check must be provided. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the licensee's activities.

4. All fingerprints obtained by the licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements included in Attachment 2 to this Order, in making a determination whether to grant access to SGI to individuals who have a need-to-know the SGI.

6. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI.

7. The licensee shall document the basis for its determination whether to grant access to SGI.

B. The licensee shall notify the NRC of any desired change in reviewing officials, in compliance with C.2 of the subject Order. The NRC will determine whether the individual nominated as the new reviewing official may have access to SGI based on a previously-obtained or new criminal history check and, therefore, will be permitted to serve as the licensee's reviewing official.

Prohibitions

A licensee shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: An arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard

[2] As used herein, ''licensee'' means any licensee or other person who is required to conduct fingerprinting in accordance with these requirements.

fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to SGI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to *forms@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

Right To Correct and Complete Information

Prior to any final adverse determination, the licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation, Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The licensee may make a final SGI access determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI, the licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

1. Each licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to Safeguards Information. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another licensee if the licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and the current licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI (whether access was approved or denied). After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E7–18564 Filed 9–19–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 070–00348]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Special Nuclear Materials License No. SNM–348, for Termination of the License and Unrestricted Release of the Department of the Army's Facility in Adelphi, MD

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Steve Hammann, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, King of Prussia, Pennsylvania, 19406; telephone 610–337–5399; fax number 610–337–5269; or by e-mail: *sth2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Special Nuclear Materials License No. SNM–348. This license is held by Department of the Army, U.S. Army Research Center, Adelphi Laboratory Center (the Licensee), for its Harry Diamond Laboratories (the Facility), located at 2800 Powder Mill Road in Adelphi, Maryland. Issuance of the amendment would authorize release of the Facility for unrestricted use and termination of the NRC license. The Licensee requested this action in a letter dated February 20, 2007. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's February 20, 2007 license amendment request, resulting in release of the Facility for unrestricted use and the termination of its NRC materials license. License No. SNM–348 was issued on February 3, 1960, pursuant to 10 CFR Part 70, and has been amended periodically since that time. The licensee moved from its original location into the Facility in 1977. This license authorized the Licensee to use special nuclear material for purposes of storage only.

The Facility is situated on approximately 160 acres of land. The building is 6000 square feet and consists of office space and laboratories. The Facility is located in a mixed residential/commercial area. Within the Facility, use of licensed materials was confined to a 310 square foot radiation storage area and a 40 square foot attached decontamination shower.

On January 27, 2005, the Licensee ceased licensed activities and initiated a survey and decontamination of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release and for license termination.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility and the termination of its NRC materials license.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of various radionuclides with half-lives greater than 120 days. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Licensee completed a final status survey on February 26, 2007. This survey covered the radiation storage area/decontamination shower and the four thousand gallon underground storage tank. The final status survey report was attached to the Licensee's amendment request dated February 20, 2007. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the NRC materials license is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 70.38(d), requiring that decommissioning of special nuclear material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release and for license termination. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action

alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the Maryland Department of Environmental Protection for review on June 12, 2007. On June 13, 2007, Maryland Department of the Environment responded by e-mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''
2. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''
3. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''
4. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities;''
5. Notification Letter dated February 28, 2005 [ML051080172];
6. Termination Request and Final Status Survey [ML070660139].

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania this 13th day of September.

For The Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E7–18587 Filed 9–19–07; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11035 and #11036]

North Dakota Disaster #ND–00009

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1726–DR), dated 09/13/2007.

Incident: Severe Storms and Tornado.

Incident Period: 08/26/2007 through 08/27/2007.

DATES: Effective Date: 09/13/2007.

Physical Loan Application Deadline Date: 11/13/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 06/13/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/13/2007, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Grand Forks.

Contiguous Counties (Economic Injury Loans Only): North Dakota.

Nelson, Steele, Traill, Walsh.

Minnesota.

Marshall, POLK.

The Interest Rates are:

For Physical Disasters:

	Percent
Homeowners With Credit Available Elsewhere	6.250
Homeowners Without Credit Available Elsewhere	3.125
Businesses With Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

For Economic Injury:

Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere: 4.000.

The number assigned to this disaster for physical damage is 11035B and for economic injury is 110360.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. E7–18581 Filed 9–19–07; 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. Request for Waiver of Special Veterans Benefits (SVB) Overpayment Recovery or Change in Repayment Rate—20 CFR 408.900–408.950, 408.923(b), 408.931(b), 408.932(c), (d) and (e), 408.941(b) and 408.942—0960–0698. Title VIII allows the payment of a monthly benefit by the Commissioner of Social Security to a qualified World War II veteran who resides outside the United States. When an overpayment in SVB occurs, the beneficiary can use this form to request waiver of recovery of the overpayment or a change in the repayment rate. The SSA–2032–BK will be used to obtain the information necessary to determine whether the provisions of the Act regarding waiver of recovery of the overpayment are met. The information on the form is needed to determine a repayment rate if repayment cannot be waived. Respondents are beneficiaries who have overpayments on their Title VIII record and wish to file a claim for waiver of recovery or change in repayment rate.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 39.

Frequency of Response: 1.

Average Burden Per Response: 120 minutes.

Estimated Annual Burden: 78 hours.

2. Request for Medical Treatment in an SSA Employee Health Facility: Patient Self-Administered or Staff Administered Care—0960–NEW. SSA operates Employee Health Clinics on-site in eight different states. These clinics provide health care for all SSA employees including treatments of personal medical conditions when authorized through a physician. The SSA–5072 is the employee's personal physician's order form. The information collected on the SSA–5072 gives the nurses the guidance they need by law to perform certain medical procedures and to administer prescription medications such as allergy immunotherapy. Also, the information collected by the SSA–5072 allows the SSA Medical Officer to determine whether the treatment can be administered safely and appropriately in the SSA Employee Health Units.

Each state has a Nurse Practice Act governing the practice of registered nurses in the state. All Nurse Practice Acts require that registered nurses administer prescription medications and certain medical treatments by following a licensed physician's orders. Form SSA–5072 provides the vehicle for the physician to provide these orders to the SSA nursing staff. Respondents are physicians of SSA employees who need to have medical treatment in the SSA Employee Health Unit.

Type of Request: Information Collection in Use without an OMB Number.

Number of Responses: 175.

Estimated Annual Burden: 15 hours.

Medication dosage changes	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated annual burden (hours)
Annually	25	1	25	5	2
Bi-Annually	75	2	150	5	13
Totals	100		175		15

3. Disability Hearing Officer's Report of Disability Hearing (DC)—20 CFR 416.1407—0906–0507. The information collected on form SSA–1204–BK is used by the Disability Hearing Officer (DHO) to conduct and document disability hearings, and to provide a structured format that covers all conceivable issues relating to Supplemental Security Income (SSI) claims for disabled children. The completed SSA–1204–BK will aid the DHO in preparing the disability decision and will provide a record of what transpired in the hearing. The respondents are DHO's in the State Disability Determination Services.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 2,000.

Frequency of Response: 1.

Average Burden per Response: 60 minutes.

Estimated Annual Burden: 2000 hours.

4. Medical Report (Individual with Childhood Impairment)—20 CFR 404.1512–404.1515, 416.912–416.915, & 20 CFR 422.125—0960–0102. The information collected from SSA–3827 is used by SSA to determine the childhood claimant's physical status prior to making a disability determination and to document the childhood disability claims folder with the medical evidence. The respondents are members of the medical community, and include physicians, hospital directors, medical records librarians, and other medical personnel.

Type of Request: Revision of an OMB-approved information collection

Number of Respondents: 12,000.

Frequency of Response: 1.

Average Burden per Response: 30 minutes.

Estimated Annual Burden: 6,000 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. National 800 Number—Claims Status—20 CFR 401.45–0960–NEW. SSA has established a process for authenticating the information of individuals who use the automated telephone services or speak to an agent to request information from SSA records. Prior to SSA responding to requests for personal information through the automated telephone services, we must authenticate the requester's information by obtaining the appropriate identification elements. This automated telephone service will provide callers with status of a Social Security claim which they have filed. All information provided will then be compared to the information contained in our records so that the appropriate claim is accessed and the respondent is given the status of that claim. Respondents are current Social Security beneficiaries.

Type of Request: Request for a new information collection.

Number of Respondents: 704,422.

Frequency of Response: 1.

Average Burden per Response: 1 minute.

Estimated Annual Burden: 11,740 hours.

2. Missing and Discrepant Wage Reports Letter and Questionnaire—26 CFR 31.6051–2–0960—0432. Each year employers report the wage amounts they paid their employees to the Internal Revenue Service (IRS) for tax purposes, and separately to SSA for retirement and disability coverage purposes. These reported amounts should equal each other; however, each year some of the employer wage reports that SSA receives are less than the wage amounts reported to the IRS. SSA attempts to ensure that employees receive full credit for the wages that they have earned through the use of the forms SSA–L93–SM; SSA–L94–SM; SSA–95–SM and SSA–97–SM. Respondents are employers who reported less wage amounts to SSA than they reported to the IRS.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 360,000.

Frequency of Response: 1.

Average Burden per Response: 30 minutes.

Estimated Annual Burden: 180,000 hours.

Dated: September 14, 2007.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E7–18538 Filed 9–19–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending August 31, 2007

The following Agreements were filed with the Department of Transportation under the sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2007–29149.

Date Filed: August 31, 2007.

Parties: Members of the International Air Transport Association.

Subject: Resolution 015h. USA Add-ons between USA and UK, (Memo 0215).

Intended effective date: 1 October 2007.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–18565 Filed 9–19–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending August 17, 2007

The following Agreements were filed with the Department of Transportation under the sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2007–29051.

Date Filed: August 17, 2007.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 547 Adoption—Resolutions TC31 South Pacific (except between South West Pacific and Canada, USA).

Intended effective date: 1 October 2007.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–18570 Filed 9–19–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending August 3, 2007

The following Agreements were filed with the Department of Transportation under the sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2007–28877.
Date Filed: July 30, 2007.
Parties: Members of the International Air Transport Association.
Subject: TC2 Within Middle East. Expedited Resolutions and Specified Fares Tables.
Intended effective date: 15 August 2007.

Docket Number: OST–2007–28878.
Date Filed: July 30, 2007.
Parties: Members of the International Air Transport Association.
Subject: TC2 Within Middle East. Resolutions and Specified Fares Tables.
Intended effective date: 15 August 2007.

Docket Number: OST–2007–28879.
Date Filed: July 30, 2007.
Parties: Members of the International Air Transport Association, Subject: Composite Passenger Tariff Coordinating Conference. Expedited Composite Resolution 049a.
Intended effective date: 15 September 2007.

Docket Number: OST–2007–28880.
Date Filed: July 30, 2007.
Parties: Members of the International Air Transport Association.
Subject: Composite Passenger Tariff Coordinating Conference. Expedited Composite Resolutions.
Intended effective date: 1 November 2007.

Docket Number: OST–2006–26409.
Date Filed: August 2, 2007.
Parties: Members of the International Air Transport Association.
Subject: TC23 Europe-South Asian Subcontinent. Expedited Flex Fares Package. Bangkok, 13 July 2007. Memo 0158, 2 August 2007.

Intended effective date: 1 November 2007.

Docket Number: OST–2007–28938.
Date Filed: August 3, 2007.
Parties: Members of the International Air Transport Association.
Subject: TC23 Europe-South Asian Subcontinent. Expedited Composite Resolutions.
Intended effective date: 1 November 2007.

Docket Number: OST–2007–28939.
Date Filed: August 3, 2007.
Parties: Members of the International Air Transport Association.
Subject: TC23 Europe-South Asian Subcontinent. Expedited Resolution 250o.
Intended effective date: 1 November 2007.

Renee V. Wright,
Program Manager, Docket Operations, Federal Register Liaison.
[FR Doc. E7–18576 Filed 9–19 –07; 8:45 am]
BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending August 10, 2007

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2007–28984.
Date Filed: August 9, 2007.
Parties: Members of the International Air Transport Association.
Subject:
Resolutions Adopted for Expedited Effectiveness, r.814, r.818, r.818g, and r.832.
Intended effective date: 1 September 2007 or 1 October 2007 as indicated.

Docket Number: OST–2007–28986.
Date Filed: August 9, 2007.
Parties: Members of the International Air Transport Association.
Subject:
Finally Adopted Resolutions for Normal Effectiveness: r.03, r.800, r.800a, r.800b, r.800c, r.800e, r.800t, r.804, r.808, r.810, r.810c, r.810i, r.810j, r.810r, r.814, r.814ff, r.814hh, r.814pp, r.816, r.818, r.818a, r.820e, r.822, r.824r, r.832, r.850, r.850a, r.850c, r.850m, r.850p, r.854, r.856, r.860a, r.866, and r.890.
Intended effective date: 1 January 2008.

Docket Number: OST–2007–28998.
Date Filed: August 9, 2007.
Parties: Members of the International Air Transport Association.
Subject:
Mail Vote Number A 137 Implementation of Resolution 814 in Ukraine.
Intended effective date: 1 April 2007.

Docket Number: OST–2007–28999.
Date Filed: August 10, 2007.
Parties: Members of the International Air Transport Association.
Subject:
Mail Vote Number A 138 Resolution 832 Remittance in Canada.
Intended effective date: 1 April 2007.

Renee V. Wright,
Program Manager, Docket Operations, Federal Register Liaison.
[FR Doc. E7–18578 Filed 9–19–07; 8:45 am]
BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 24, 2007

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2007–29081.
Date Filed: August 21, 2007.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 11, 2007.
Description: Application of CJSC Aviation Enterprise Tesis, (''Tesis''), requesting a foreign air carrier permit authorizing (i) The carriage in scheduled foreign air transportation of property and mail on three following routes: (a) Khabarovsk, Russia-Anchorage, AK-New York, NY-Miami, FL (b) Moscow, Russia-via Shannon/Gander-New York, New York, Miami, FL. (ii) The Charter air transportation of property and mail between any point or points in the Russian Federation and any point or points in the territory of the United States; and to engage in such other charter services. (iii) To engage in such other charter trips in foreign air transportation. Applicant further requests that it be authorized to operate under the name and style of ''CJSC Aviation Enterprise Tesis'' and/or ''Aviation Enterprise Tesis'' or ''Tesis Airlines.''

Renee V. Wright,
Program Manager, Docket Operations, Federal Register Liaison.
[FR Doc. E7–18563 Filed 9–20–07; 8:45 am]
BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 10, 2007

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2007–28950.
Date Filed: August 6, 2007.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 27, 2007.
Description: Application of Vietnam Airlines Corporation (' Vietnam Airlines''), I. requesting an exemption to conduct A. scheduled foreign air transportation of persons, property, and mail from points behind Vietnam, via Vietnam, Japan and Taiwan, to the U.S. coterminal points Los Angeles, San Francisco, New York, Seattle and Dallas/Ft.Worth, and beyond to points in Canada; and B. charter foreign air transportation of persons, property, and mail (1) Between any point or points in Vietnam and any point or points in the United States, (2) between any point or points in the United States and any

point or points in third country or countries, provided that such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to Vietnam, for the purpose of carrying traffic between Vietnam and the United States, and (3) as otherwise authorized. II) A foreign air carrier permit to conduct A. scheduled foreign air transportation of persons, property, and mail, from points behind Vietnam via Vietnam and intermediate points to a point or points in the United States and beyond, consistent with the Air Transport Agreement in effect between the United States and Vietnam and the points and countries selected by the Government of Vietnam thereunder; and (B) charter foreign air transportation of persons, property, and mail (1) Between any point or points in Vietnam an any point or points in the United States, (2) between any point or points in the United States and any point or points in a third country or countries, provided that such service constituents part of a continuous operation, with or without a change of aircraft, that includes service to Vietnam for the purpose of carrying local traffic between Vietnam and the United States, and (3) as otherwise authorized.

Docket Number: OST–2002–12358.

Date Filed: August 7, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 28, 2007.

Description: Application of M&N Aviation, Inc. requesting authority to resume scheduled passenger operation as a commuter air carrier.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–18566 Filed 9–19–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 3, 2007

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2007–28895.

Date Filed: July 31, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 21, 2007.

Description: Application of Croatia Airlines, requesting a foreign air carrier permit to engage in scheduled foreign air transportation of persons, property, and mail from points behind Croatia, via Croatia and any intermediate points, to any point or points in the United States and beyond.

Docket Number: OST–2007–28919.

Date Filed: August 2, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 23, 2007.

Description: Application of Aeroenlaces Nacionales, S.A. de C.V. (''Vivaaerobus''), requesting a foreign air carrier permit to engage in scheduled foreign air transport of persons, property, and mail from a point or points in Mexico to a point or points in the United States, as well as such charter authority permitted under the U.S.-Mexico Air Transport Agreement.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–18569 Filed 9–19–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 13, 2007

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2007–28724.

Date Filed: July 10, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 31, 2007.

Description: Application of Air Molokai Nui, Inc., requesting authority to operate scheduled passenger service as a commuter air carrier.

Docket Number: OST–2007–28728.

Date Filed: July 10, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 31, 2007.

Description: Application of Alitalia Linee Aeree Italiane S.p.A. (''Alitalia''), requesting an amendment to its foreign air carrier permit to the full extent authorized by the new Air Transport Agreement between the United States, on the one hand, and the European Union and the member states of the European Union, on the other hand (''U.S.–E.U. Agreement''), to enable Alitalia to engage in: (i) Foreign scheduled and charter air transportation of persons, property, and mail from any point or points behind any member state of the European Union via any point or points in any member state and via intermediate points to any point or points in the United States or beyond; (ii) foreign scheduled and charter air transportation of persons, property, and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) foreign scheduled and charter cargo air transportation between any point or points in the United States and any other point or points; (iv) other charters pursuant to the prior approval requirements set forth in part 212; and (v) transportation authorized by any additional route rights that may be made available to European Union carriers in the future. Alitalia also requests a corresponding exemption to the extent necessary to enable Alitalia to provide the services described above pending issuance of an amendment to its foreign air carrier permit and such other relief as the Department may deem necessary or appropriate.

Docket Number: OST–2006–24355.

Date Filed: July 12, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 2, 2007.

Description: Application of Amira Air GmbH (''Amira Air''), requesting an exemption and an amended foreign air carrier permit authorizing Amira Air to conduct the following services using small aircraft, in addition to the charter

services authorized under its existing foreign air carrier permit: (i) Charter foreign air transportation of persons, property, and mail from any point or points behind any Member State of the European Union, via any point or points in any EU Member State and via intermediate points, to any point or points in the United States and beyond; (ii) charter foreign air transportation of persons, property, and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area (''ECAA''); (iii) other charters (between non-EU/ECAA third countries and the United States, and otherwise) in accordance with part 212; and (iv) charter transportation authorized by any additional route rights made available to European Community carriers in the future, to the extent permitted by Amira Air's homeland license on file with the Department.

Docket Number: OST–2007–28736.

Date Filed: July 12, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 2, 2007.

Description: Application of Hi Fly—Transportes Aereos S.A., requesting an initial foreign air carrier permit to provide charter foreign air transportation of persons, property, and mail from points behind Portugal via Portugal and intermediate points to a point or points in the United States and beyond.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–18572 Filed 9–19–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 17, 2007

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2007–29028.

Date Filed: August 14, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 4, 2007.

Description: Application of Societe Air France (''Air France'') requesting an exemption and an amended foreign air carrier permit authorizing Air France to conduct operations to and from the United States to the full extent authorized by the recently-signed United States-European Union Air Transport Agreement, for flight operations on or after March 30, 2008, including authority to engage in: (i) Foreign scheduled and charter air transportation of persons, property, and mail from any point or points behind any Member States of the European Union, via any point or points in any Member State and via intermediate point or points in the United States and beyond; (ii) foreign scheduled and charter air transportation of persons, property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) foreign scheduled and charter cargo air transportation between any point or points in the United States and any point or points; (iv) other charters pursuant to 14 CFR Part 212; and (v) transportation authorized by any additional route rights made available to European Community carriers in the future.

Docket Number: OST–2007–29037.

Date Filed: August 15, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 5, 2007.

Description: Application of Deutsche Lufthansa AG (''Lufthansa''), requesting an amendment of its foreign air carrier permit and an exemption to engage in: (1) Scheduled and charter foreign air transportation of persons, property, and mail from any point or points behind any Member State(s) of the European Union via any point or points in any Member State(s) and via intermediate points to any point or points in the United States and beyond; (2) scheduled and charter foreign air transportation of persons, property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (3) scheduled and charter foreign cargo air transportation between any point or points in the United States and any point or points in any third country or countries; (4) other charter foreign air transportation of persons, property and mail; and (5) transportation authorized by any additional route or other rights made available to European Community carriers in the future.

Docket Number: OST–2007–29047.

Date Filed: August 16, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 6, 2007.

Description: Application of Continental Airlines, Inc. (''Continental''), requesting a certificate of public convenience and necessity authorizing Continental to provide scheduled foreign air transportation of persons, property, and mail between Houston, Texas and Buenos Aires, Argentina.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–18585 Filed 9–19–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Pellston Regional Airport; Pellston, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the release of 621.46 acres of vacant airport property for the proposed development of warehouses, training centers, and associated access roads as a component of Sovereign Deed's National Response Center. The land consists of 7 parcels. Parcel 1 was acquired under grant 9–20–048–C905. Parcels 2, 3, 4, 5 and 8 were dedicated as airport property prior to 1946 and have no federal funding involvement. Parcel 7 was acquired under grants 9–2–048–C905 and 8–26–0076–01. There are no impacts to the airport by allowing the airport to lease the property. The land is not needed for aeronautical use. Approval does not constitute a commitment by the FAA to financially assist in the lease of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the lease of the airport property will be in accordance with FAA's Policy and

Procedures Concerning the Use of Airport Revenue, published in the Federal Register on February 16, 1999. In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before October 22, 2007.

ADDRESSES: Written comments on the Sponsor's request must be delivered or mailed to: Jason K. Watt, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174.

FOR FURTHER INFORMATION CONTACT: Jason K. Watt, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–614, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number (734–229–2906)/FAX Number (734–229–2950). Documents reflecting this FAA action may be reviewed at this same location or at Pellston Regional Airport, Pellston, Michigan.

SUPPLEMENTARY INFORMATION:

Parcel 1 Legal Description

Part of the Northeast quarter of Section 29, Township 37 North Range 4 West, McKinley Township, Emmet County, Michigan, described as commencing at the Northeast corner of said section 29; thence South 00°53′52″ East along said section line 907.19 feet to the POINT OF BEGINNING; thence continuing South 00°53′52″ East along said section line 446.14 feet; thence North 89°47′53″ West 1304.56 feet to the East eighth line of said section; thence North 00°34′44″ West along the East eighth line 1353.20 feet to the North section line; thence South 89°47′53″ East along said section line 198.44 feet; thence South 53°32′29″ East 925.61 feet; thence South 45°35′01″ East 515.69 feet to the POINT OF BEGINNING.

Being a part of the Northeast quarter of Section 39, Township 37 North Range 4 West and containing 29.73 acres. Subject to easements and restrictions of record and subject to the rights of the public and any governmental unit in any part thereof taken, used or deeded for street, road or highway purposes.

Parcel 2 Legal Description

Part of section 28, Township 37 North Range 4 West, McKinley Township, Emmet County, Michigan, described as commencing at the Northwest corner of said section 28; thence South 00°53′52″ East along said section line 907.19 feet to the POINT OF BEGINNING; thence continuing South 45°35′01″ East 1234.50 feet; thence South 45°00′39″ East parallel to and 745 feet Southwesterly of the center line of runway 14/32 2604.99 feet; thence South 45°00′13″ West parallel with and 495 feet Northwesterly of the center line of runway 5/23 884.29 feet; thence South 38°57′34″ West 406.35 feet; thence South 45°24′14″ East 469.58 feet; thence South 43°08′52″ West 216.53 feet; thence North 46°51′08″ West 554.62 feet; thence North 56°53′28″ West 442.54 feet; thence North 41°08′01″ West 1012.07 feet; thence North 73°33′18″ West 571.29 feet to the West section line of said section; thence North 00°53′52″ West along said section line 2589.85 feet to the POINT OF BEGINNING.

Being a part of section 28, Township 37 North Range 4 West and containing 114.33 acres. Subject to easements and restrictions of record and subject to the rights of the public and any governmental unit in any part thereof taken, used or deeded for street, road or highway purposes.

Parcel 3 Legal Description

Part of section 33, Township 37 North Range 4 West, McKinley Township, Emmet County, Michigan, described as BEGINNING at the Southwest corner of said section 33; thence North 00°17′05″ West along said section line 2653.81 feet to the quarter corner common to sections 32 and 33; thence North 00°09′30″ East along said section line 2595.44 feet; thence South 89°50′30″ East 75.51 feet; thence South 53°49′19″ East 474.49 feet; thence South 76°52′38″ East 406.85 feet; thence South 53°04′07″ East 939.31 feet; thence South 32°44′38″ East 861.74 feet; thence South 45°25′48″ East 1337.90 feet to the East and West quarter line of said section; thence North 89°53′55″ West along said quarter line 386.56 feet to the center quarter corner of said section; thence South 00°17′11″ West 1319.66 feet the South eighth line of said section; thence South 89°56′39″ West along the South eighth line 1316.11 feet; thence South 00°00′00″ West 1323.7 feet to the South section line of said section; thence South 89°47′08″ West 1309.53 feet to the POINT OF BEGINNING. Being a part of section 33, Township 37 North Range 4 West and containing 224.69 acres. Subject to easements and restrictions of record and subject to the rights of the public and any governmental unit in any part thereof taken, used or deeded for street, road or highway purposes.

Parcel 4 Legal Description

Part of sections 28, 33, and 34 of Township 37 North Range 4 West, McKinley Township, Emmet County, Michigan, described as BEGINNING at the quarter corner common to sections 33 and 34; thence North 89°53′55″ West 1273.16 feet; thence North 21°58′52″ East 318.93 feet; thence North 17°05′27″ West 437.62 feet; thence North 43°50′18″ West 1054.05 feet; thence North 43°49′43″ West 1296.14 feet; thence North 46°51′08″ West 548.82 feet; thence North 43°08′52″ East 216.53 feet; thence South 45°24′14″ East 704.93 feet; thence North 63°12′29″ East 396.10 feet; thence North 52°27′49″ East 776.25 feet; thence South 45°21′34″ East 3984.18 feet; thence North 89°54′03″ East 138.29 feet; thence South 44°26′16″ East 419.59 feet to the East & West quarter line of section 34; thence South 89°54′17″ West along the East & West quarter line 1575.63 feet to the POINT OF BEGINNING.

Being a part of sections 28, 33 and 34, Township 37 North Range 4 West and containing 131.16 acres. Subject to easements and restrictions of record and subject to the rights of the public and any governmental unit in any part thereof taken, used or deeded for street, road or highway purposes.

Parcel 5 Legal Description

Part of the North half of section 28 and part of the Northwest quarter of section 27 of Township 37 North Range 4 West, McKinley Township, Emmet County, Michigan, described as BEGINNING at the section corner common to sections 21, 22, 27 and 28; thence North 88°56′59″ East along the section line common to sections 22 and 27 1095.01 feet; thence South 51°04′47″ West 331.61 feet; thence South 45°00′13″ West parallel with and 495 feet Northwest of the center line of runway 5/23 2676.25 feet; thence North 45°00′38″ West parallel with and 1494.74 feet Northeasterly of the center line of runway 14/32 2900.31 feet to the section line common to sections 21 and 28; thence North 89°24′26″ East along said section line 417.95 feet to the quarter corner common to sections 21 and 28; thence South 81°47′10″ East 648.03 feet; thence North 81°28′10″ East 710.97 feet to the section line common to sections 21 and 28; thence North 89°27′04″ East 1344.55 feet to the POINT OF BEGINNING.

Being a part of the North half of section 28 and part of the Northwest quarter of section 27 of Township 37 North Range 4 West and containing 97.15 acres. Subject to easements and restrictions of record and subject to the

rights of the public and any governmental unit in any part thereof taken, used or deeded for street, road or highway purposes.

Parcel 7 Legal Description

Part of the Southwest quarter of the Southwest quarter of section 21 of Township 37 North Range 4 West, McKinley Township, Emmet County, Michigan, described as commencing at the Southwest corner of said section 21; thence North 89°27′04″ East along said section line 1234.61 feet to the POINT OF BEGINNING; thence North 44°26′16″ West 729.13 feet; thence North 36°28′48″ West 978.82 feet to the South eighth line of said section; thence North 89°29′26″ East along the South eighth line 1199.81 feet to the West eighth line of said section; thence South 00°06′48″ East along said eighth line 1317.26 feet to the South section line of said section; thence South 89°27′04″ West 109.93 feet to the POINT OF BEGINNING.

Being a part of the Southwest quarter of section 21, Township 37 North Range 4 West and containing 20.94 acres. Subject to easements and restrictions of record and subject to the rights of the public and any governmental unit in any part thereof taken, used or deeded for street, road or highway purposes.

Parcel 8 Legal Description

Part of the Southwest quarter of section 28 and part of the Northwest quarter of section 33, Township 37 North Range 4 West, McKinley Township, Emmet County, Michigan, described as commencing at the section corner common to sections 28, 29, 32 and 33; thence South 00°09′30″ West along the section line common to sections 32 and 33 55.06 feet; thence South 89°50′30″ East 75.51 feet; thence South 53°49′19″ East 474.49 feet; thence South 76°52′38″ East 406.85 feet; thence South 53°04′07″ East 128.03 feet to the POINT OF BEGINNING; thence North 02°51′25″ East 303.39 feet; thence North 46°48′37″ East 349.40 feet; thence South 89°51′15″ East 833.91 feet; thence South 46°51′08″ East 146.63 feet; thence North 89°50′07″ West 901.10 feet; thence South 46°48′3.7″ West 263.25 feet; thence South 03°07′41″ West 337.32 feet; thence North 53°04′06″ West 124.25 feet to the POINT OF BEGINNING.

Being a part of the Southwest quarter of section 28 and part of the Northwest quarter of section 33, Township 37 North Range 4 West and containing 3.46 acres. Subject to easements and restrictions of record and subject to the rights of the public and any governmental unit in any part thereof taken, used or deeded for street, road or highway purposes.

Issued in Romulus, Michigan on September 10, 2007.

Brad N. Davidson,

Acting Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 07–4650 Filed 9–19–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

[4910–RY]

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Utah

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA, Army Corps of Engineers (USACE) and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA, USACE, and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, U.S. Route 6, I–15 in Spanish Fork to I–70 near Green River in the State of Utah. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before March 18, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Edward T. Woolford, Environmental Program Manager, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118, Telephone (801) 963–0182. The FHWA Utah Division Office's normal business hours are 7 a.m. to 4:30 p.m. [MST]. For UDOT: Ms. Rebecka Stromness, Environmental Program Manager, Utah Department of Transportation, 4501 South 2700 West, Salt Lake City, Utah 84119, Telephone (801) 965–4327.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA, USACE, and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of Utah: U.S. Route 6, I–15 in Spanish Fork to I–70 near Green River in the State of Utah. The project will be 127 miles long, four-lane highway (two lanes in each direction), except for certain areas near wetlands where a passing-lane configuration would be implemented to minimize or avoid wetland impacts. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on September 22, 2005, in the FHWA Record of Decision (ROD) issued on December 22, 2005, and in other documents in the FHWA project files. The FEIS, ROD, and other project records are available by contacting the FHWA or the Utah Department of Transportation at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at *http://www.udot.utah.gov/* or viewed at public libraries in the project area. The USACE decision and permit (USACE Permit 200250387) are available by contacting U.S. Army Corp of Engineers.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Marine Mammal Protection Act [16 U.S.C. 1361]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act, [16 U.S.C. 3921, 3931]; Wetlands Mitigation [23 U.S.C. 103(b)(6)(M) and 133(b)(11)]; Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: September 14, 2007.

Walter C. Waidelich, Jr.,

Division Administrator, Salt Lake City.

[FR Doc. E7–18545 Filed 9–19–07; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Correction to Proposed Information Collections; Comment Request Notice

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice and request for comments; correction.

Correction

In notice document E7–17877, published in the issue of Tuesday, September 11, 2007, at 72 FR 51904–51905, make the following correction:

On page 51905, in the fourth paragraph (titled ''*Current Actions:*''), in the third sentence, the phrase ''the tobacco manufacturer'' should read ''the brewer''.

Dated: September 13, 2007.

Francis W. Foote,

Director, Regulations and Rulings Division.

[FR Doc. E7–18509 Filed 9–19–07; 8:45 am]

BILLING CODE 4810–31–P

Federal Register

Thursday,
September 20, 2007

Part II

Environmental Protection Agency

40 CFR Part 63

Revision of Source Category Lists for Standards Under Sections 112(c) and 112(k) of the Clean Air Act; and National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0083; FRL–8470–2]

RIN 2060–AM71

Revision of Source Category Lists for Standards Under Sections 112(c) and 112(k) of the Clean Air Act; and National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of revisions to source category lists.

SUMMARY: EPA is adding electric arc furnace steelmaking facilities to the list of source categories subject to regulation under Clean Air Act (CAA) section 112(c)(6) and revising the area source category list for the Integrated Urban Air Toxics Strategy. At the same time, EPA is proposing national emission standards for electric arc furnace steelmaking facilities that are area sources of hazardous air pollutants (HAP). The proposed standards establish requirements for the control of mercury emissions that are based on the maximum achievable control technology (MACT) and requirements for the control of other hazardous air pollutants that are based on generally available control technology or management practices.

DATES: Comments must be received on or before October 22, 2007, unless a public hearing is requested by October 1, 2007. If a hearing is requested on the proposed rule, written comments must be received by November 5, 2007. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before October 22, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0083, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities Docket, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0083. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Mr. Phil Mulrine, Sector Policies and Program Division, Office of Air Quality Planning and Standards (D243–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5289; fax number (919) 541–3207, e-mail address: mulrine.phil@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The regulated category and entities affected by this proposed action include:

Category	NAICS code [1]	Examples of regulated entities
Industry	331111	Steel mills with electric arc furnace steelmaking facilities.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 63.10680 of subpart YYYYY (National Emission Standards for

Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. What should I consider as I prepare my comments for EPA?

Do not submit information containing CBI to EPA through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID EPA–HQ–OAR–2004–0083. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this notice and proposed action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

D. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing concerning the proposed rule by October 1, 2007, we will hold a public hearing on October 5, 2007. If you are interested in attending the public hearing, contact Ms. Pamela Garrett at (919) 541–7966 to verify that a hearing will be held. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or an alternate site nearby.

E. How is this document organized?

The information in this preamble is organized as follows:

I. General Information
- A. Does this action apply to me?
- B. What should I consider as I prepare my comments to EPA?
- C. Where can I get a copy of this document?
- D. When would a public hearing occur?
- E. How is this document organized?

II. Background Information
- A. What is the statutory authority for the proposed NESHAP?
- B. What criteria did EPA use in developing this proposed NESHAP?

III. Addition and Revision to Source Category Lists

IV. Proposed NESHAP for EAF Steelmaking Facilities
- A. What area source category is affected by the proposed NESHAP?
- B. What are the production processes and emissions sources?
- C. Summary of the Proposed Requirements
- D. What is our rationale for the proposed MACT and GACT standards?

V. Impacts of the Proposed Standards

VI. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

II. Background Information

A. What is the statutory authority for the proposed NESHAP?

Section 112(k)(3)(B) of the CAA requires EPA to identify at least 30 hazardous air pollutants (HAP), which, as the result of emissions of area sources,[1] pose the greatest threat to public health in urban areas. Consistent with this provision, in 1999, in the Integrated Urban Air Toxics Strategy, EPA identified the 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the ''Urban HAP.'' See 64 FR 38715, July 19, 1999. Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 Urban HAP are subject to regulation. EPA listed the source categories that account for 90 percent of the Urban HAP emissions in the Integrated Urban Air Toxics Strategy.[2] Sierra Club sued EPA, alleging a failure to complete standards for the area source categories listed pursuant to CAA sections 112(c)(3) and (k)(3)(B) within the time frame specified by the statute. *See Sierra Club* v. *Johnston,* No. 01–1537, (D.D.C.). On March 31, 2006, the court issued an order requiring EPA to promulgate standards under CAA section 112(d) for those area source categories listed pursuant to CAA section 112(c)(3).

We added electric arc furnace (EAF) steelmaking facilities to the Integrated Urban Air Toxics Strategy Area Source Category List on June 26, 2002 (67 FR 43112). The inclusion of this source category on the section 112(c)(3) area source category list is based on 1990 emissions data, as EPA used 1990 as the baseline year for that listing. This source category was listed as contributing a percentage of the total area source emissions for the following ''Urban HAP'': arsenic, cadmium, chromium, lead, manganese, mercury, nickel, and trichloroethylene. We subsequently discovered that the 1990 emissions data for trichloroethylene was for a few specialty EAF facilities that used trichloroethylene in vapor degreasing. These emission units at both major and area sources are already subject to standards for halogenated solvent cleaning under 40 CFR part 63, subpart T. Consequently, we are not proposing any additional standards for trichloroethylene from EAF steelmaking facilities.

Section 112(c)(6) requires EPA to list, and subject to standards pursuant to section 112(d)(2) or (d)(4), categories of sources accounting for not less than 90 percent of emissions of each of seven specific HAP: alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,9-tetrachlorodibenzofurans, and 2,3,7,8-tetrachloridibenzo-p-dioxin. Congress targeted these HAP for regulation because of their persistence and tendency to bioaccumulate in the environment. These HAP are also

[1] An area source is a stationary source of hazardous air pollutant (HAP) emissions that is not a major source. A major source is a stationary source that emits or has the potential to emit 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

[2] Since its publication in the Integrated Urban Air Toxics Strategy in 1999, EPA has revised the area source category list several times.

associated with adverse health effects such as nervous system damage and reproductive effects. We published an initial list of source categories under CAA section 112(c)(6) on April 10, 1998 (63 FR 17838). As discussed below in section III of this preamble, we are adding EAF steelmaking facilities that are area sources to this list of source categories under CAA section 112(c)(6) solely on the basis of mercury emissions.

During the development of these proposed emissions standards, we discovered two EAF facilities that are co-located at integrated iron and steel plants that are major sources, of which we were previously not aware. We plan to list EAF steelmaking facilities as major sources under CAA section 112(c) and to develop national emission standards for hazardous air pollutants (NESHAP) for them based on the performance of maximum achievable control technology (MACT). However, these two major sources are not needed to fulfill the CAA section 112(c)(6) requirement to develop standards for sources accounting for not less than 90 percent of the emissions of mercury so we are not pursuing such action in this rulemaking given the severe time constraints to which this rulemaking is subject.

B. What criteria did EPA use in developing this proposed NESHAP?

We are proposing standards for mercury in response to a court-ordered deadline that requires promulgation of standards for listed CAA section 112(c)(6) source categories by December 15, 2007 (*Sierra Club* v. *Johnson*, no. 01–1537, D.D.C). The proposed standards for mercury emissions from all EAF steelmaking facilities that are area sources of HAP are consistent with CAA section 112(c)(6).

The court order in *Sierra Club* v. *Johnson* also requires EPA to issue standards for 10 source categories that EPA listed pursuant to CAA section 112(c)(3) and (k)(3)(B) by December 15, 2007. In response to this requirement, we are proposing standards based on generally available control technology (GACT) for the control of the Urban HAP arsenic, cadmium, chromium, lead, manganese, and nickel from area source electric arc furnace steelmaking facilities. The bases for these standards are described below.

Under CAA section 112(d)(5), we may elect to promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.'' The alternative is to base standards on performance of MACT under section 112(d)(2) and (3) as described below. Additional information on the definition of ''generally available control technology or management practices'' is found in the Senate report on the 1990 amendments to the CAA (S. Rep. No. 101–228, 101st Cong. 1st sess. 171–172). That report states that GACT is to encompass:

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with this legislative history, we can and do consider costs and economic impacts in determining GACT.

As provided in CAA section 112(d)(5), EPA is electing to propose standards under CAA section 112(c)(3) based on GACT for EAF steelmaking facilities that are area sources. As stated further below (see section IV.D.3 of this preamble), we do not believe that a choice to base standards for these area sources on GACT, rather than MACT, requires justification. However, should justification be required, we are proposing standards based on GACT rather than on MACT because these facilities are already well controlled for the metal HAP these sources emit, and a regulation based on GACT will appropriately allow us to consider the costs and economic impacts of more stringent regulations. See the discussion of particulate matter (PM) controls in section IV.D.4 of this preamble. We believe the consideration of costs and economic impacts is especially important for EAF area sources because, given their current well-controlled levels, a MACT floor determination could result in only marginal reductions in HAP emissions at very high costs for modest incremental improvement in control. The consideration of cost is especially important for the small businesses that operate small specialty and stainless steel EAF facilities.

We are proposing standards pursuant to CAA section 112(d)(2) for mercury emissions from all EAF steelmaking facilities that are area sources of HAP. Standards established under CAA section 112(d)(2) must reflect performance of MACT. The MACT-based regulation can be based on the emissions reductions achievable through application of measures, processes, methods, systems, or techniques including, but not limited to: (1) Reducing the volume of, or eliminating emissions of, such pollutants through process changes, substitutions of materials, or other modifications; (2) enclosing systems or processes to eliminate emissions; (3) collecting, capturing, or treating such pollutants when released from a process, stack, storage or fugitive emission point; (4) design, equipment, work practices, or operational standards as provided in section 112(h) of the CAA; or (5) a combination of the above.[3]

The MACT floor is the minimum control level allowed for NESHAP and is defined under CAA section 112(d)(3). For new sources, MACT standards cannot be less stringent than the emission control achieved in practice by the best-controlled similar source, as determined by the Administrator. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources in the category or subcategory (for which the Administrator has emission information) or the best performing 5 sources for categories or subcategories with fewer than 30 sources.

Although emission standards are often structured in terms of numerical emissions limits, alternative approaches are sometimes necessary and are authorized pursuant to CAA section 112(d)(2). For example, in some cases, physically measuring emissions from a source may be not practicable due to technological and economic limitations. Sections 112(d)(2)(D) and 112(h) of the CAA authorize EPA to promulgate a design, equipment, work practice, or operational standard, or combination thereof, consistent with the provisions of CAA sections 112(d) or (f), in those cases where it is not feasible to prescribe or enforce an emission standard. Under CAA section 112(h)(2), the phrase ''not feasible to prescribe or enforce an emission standard'' includes situations in which the EPA determines that the HAP emissions cannot be emitted through a conveyance designed and constructed to emit or capture the emissions or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

We are proposing an emissions standard for mercury pursuant to CAA section 112(d)(2)(A) that is based on pollution prevention measures which

[3] Section 112(d)(4) (not relevant here) allows alternative risk-based standards for HAP which are threshold pollutants.

''reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials, or other modifications.'' We describe below why this standard establishes the MACT floor for mercury under section 112(d)(3), and further why we are not proposing beyond-the-floor standards for mercury. We note first, however, that we do not view standards requiring (or directly based upon) pollution prevention to be work practices under section 112(h). This is because the statute specifically differentiates between emission standards requiring pollution prevention measures (''measures which reduce the volume of, or eliminate emissions of, such [HAP] through * * * substitution of materials'') and those requiring work practices, with only the latter requiring separate justification under section 112(h). Compare section 112(d)(2)(A) and (D).[4] This is a reasonable construction, since there is reason to favor standards requiring use of pollution prevention measures, which eliminate HAP emissions altogether, over standards reflecting merely the capture of some portion of an emitted HAP. There is thus no reason to disfavor pollution prevention-based standards by allowing their use only if the section 112(h) criteria are also satisfied.

However, even assuming, for the sake of argument, that the proposed pollution prevention standards for mercury are considered to be work practices, it is not feasible to prescribe or enforce an emissions limit for mercury, within the meaning of section 112(h). We believe that continuous emission monitoring systems (CEMS) for mercury concentration and volumetric flow rate would be needed for EAF, because EAF steelmaking is a batch process, and mercury emissions vary enormously from batch to batch as different scrap sources are processed. Indeed, emissions have been shown to vary by two orders of magnitude at a single plant.[5] Cf. *Mossville Environmental Action Now* v. *EPA*, 370 F. 3d 1232, 1240 (D.C. Cir. 2004) (noting that EPA reasonably declined to establish MACT floor levels based on single emission level measurements from batch process operations because of constant change in those levels).

We therefore examined the technological and economic feasibility of continuous monitoring for mercury from these sources. We note first that mercury CEMS are not demonstrated for EAF, raising a threshold question of their technical feasibility for all EAF. Furthermore, most EAF discharge emissions from positive pressure baghouses without stacks. Continuous mercury monitoring would not be technically feasible for these EAF (i.e., stackless EAF), even assuming that mercury CEMS were otherwise demonstrated for EAF. This is because volumetric flow rate and concentration would need to be determined by CEMS to measure the mass emission rate of mercury, and without a stack, it is nearly impossible to obtain an accurate measurement of volumetric flow rate or to obtain representative measurements of mercury concentration in the discharged emissions. Indeed, EPA has previously determined that the use of continuous opacity monitoring systems (COMS) was not feasible for positive pressure baghouses without stacks for this reason.[6, 7]

Some EAF do have stacks, and the limited amount of mercury emissions data from EAF which EPA has comes from such sources. These limited test data were collected using manual test methods and are therefore not reliable for determining an EAF's actual performance because these short-term test results are not representative of the long-term operation of a cyclic batch process. The results of the different manual tests (typically 1-hour runs) show a variability of over two orders of magnitude within a single source (as well as across sources) and reinforce the conclusion that continuous monitoring would be needed to prescribe and enforce a numerical emissions limit for mercury.[8] As noted, CEMS are not demonstrated for these sources. For these reasons, we do not believe it technologically practicable to apply continuous measurement methodology to even EAFs with stacks.

We also examined the possibility of setting a direct limit on the amount of mercury entering the EAF and thus limiting emissions.[9] However, the scrap charged to EAF includes many shapes and sizes, bundles, discrete pieces, and various sizes of shredded metal. Accordingly, there is no way to obtain representative samples for analysis of mercury content to develop or enforce a mercury limit for the scrap. The number of mercury switches in the scrap (the predominant source of mercury in the scrap, and hence to an EAF) also cannot be determined for the same reasons. In addition, the switches would not be recognizable after scrap dealers have crushed and shredded incoming scrap. Consequently, we propose that it is not feasible or practicable to establish a limit for mercury in the scrap.

The pollution prevention approach which is the basis for the proposed MACT standard for mercury is discussed below in section IV.D.1 of this preamble.

III. Addition and Revision to Source Category Lists

Section 112(c)(6) of the CAA requires us to list categories and subcategories of sources accounting for not less than 90 percent of the aggregate emissions of each of seven specific HAP. Since the publication of the original 1998 CAA section 112(c)(6) source category list, we have collected additional data on mercury emissions in 1990 and performed another review of information on the 1990 baseline emissions inventory that served as the basis for the listing. In re-evaluating the baseline inventory, we have determined that EAF steelmaking facilities emit mercury and contributed to the 90 percent of the aggregate emissions of mercury in 1990, and we have updated our estimates of the 1990 baseline year to reflect this contribution of mercury from EAF.[10] Consequently, we are adding EAF steelmaking facilities to the list of source categories under CAA section 112(c)(6) on the basis of mercury emissions.

This notice also announces a revision to the area source category list developed under our Integrated Urban Air Toxics Strategy pursuant to CAA section 112(c)(3). The revision changes the name of the listed area source category, ''Stainless and Nonstainless Steel Manufacturing Electric Arc

[4] Such a standard is an ''emission standard'' since it ''limits the quantity * * * of emissions of air pollutants on a continuous basis''. See section 302(k)(definition of ''emission standard'').

[5] See ''Analysis of Mercury Emissions Test Data'' in Docket ID No. EPA–HQ–OAR–2004–0083.

[6] For example, EPA estimated that 70 of 130 electric arc furnaces (EAF) subject to the new source performance standard (NSPS) were not required to install continuous opacity monitors because of the configuration of their baghouse. (See the EPA fact sheet for the NSPS amendments available at *http://www.epa.gov/ttn/oarpg/t1/fact_sheets/eaf_npsfs.pdf*).

[7] Retrofitting such sources with stacks would be extremely costly for most electric arc furnaces (EAFs) to the point that it would not be economically practicable to do so. See ''Estimated Impacts of Proposed Area Source Standard for EAF'' in EPA Docket ID No. EPA–HQ–OAR–2004–0083. EPA believes that one takes a source as one finds it for purposes of applying section 112(h), and therefore that it is simply not technologically practicable to apply continuous mercury monitoring technology to a stackless EAF.

[8] See ''Analysis of Mercury Emissions Test Data'' in EPA Docket ID No. EPA–HQ–OAR–2004–0083.

[9] However, as explained in section IV.D.1 of this preamble, the standard we are proposing effectively establishes such a limit.

[10] Additional information on the ''1990 Emissions Inventory of Section 112(c)(6) Pollutants'' is available at *http://www.epa.gov/ttn/atw/112c6/112c6pg.html*.

Furnaces (EAF)'' to ''Electric Arc Furnace Steelmaking Facilities.'' We are making this revision to clarify that the source category includes all types of steel made in EAF, such as stainless steel, carbon steel, specialty steel, and other grades and alloys of steel. This is simply a change in the name of the source category and does not change the universe of sources that were the basis of the original listing notice.

IV. Proposed NESHAP for EAF Steelmaking Facilities

A. What area source category is affected by the proposed NESHAP?

The EAF steelmaking area source category consists of facilities engaged in the production of steel using EAF to melt primarily ferrous scrap to produce molten steel. The molten steel is refined by ladle metallurgy processing and subsequently cast into basic steel shapes that are further processed in rolling mills.

The U.S. steel industry produced about 106 million tons of raw steel in 2006, and approximately 93 ''minimills'' that melt ferrous scrap in EAF accounted for 57 percent of the total U.S. production. Critically, for purposes of the mercury standard proposed in this rule, the EAF at minimills produce steel by melting recycled ferrous scrap. The reason this is critical is that the mercury emitted by EAF comes almost exclusively from automotive scrap, and approximately 50 to 80 percent of this mercury can be eliminated from the scrap feed by pollution prevention measures carried out upstream of the EAF.

The production of steel in minimills has increased dramatically over the past 30 years. Minimills accounted for 10 percent of the national steel production in 1970, 30 to 40 percent in the 1980s, 40 to 50 percent in the 1990s, and (as noted) 57 percent in 2006. The growth has been attributed in part to an expansion in the types and quality of steel products that minimills can produce, including heavy structurals, rail, plate, specialty bar, hot rolled, cold rolled, galvanized, and stainless flat rolled products.

Most of the steel produced in EAF is carbon steel used in the manufacture of construction materials, automobiles, appliances, and other applications. Approximately 4 percent (about 2 million tons) is specialty and stainless steel, which are high value steel products. The types of steel are defined by their composition of alloying elements. Stainless and alloy steels contain less carbon and zinc and more chromium, manganese, and nickel than carbon steels. Some stainless steel grades contain 12 to 28 percent chromium and 4 to 25 percent nickel.

U.S. minimills are the largest recyclers of metal scrap in the world. Recycled iron and steel scrap nationwide in 2004 included 25 percent ''home scrap'' (from current operations at the plant), 26 percent ''prompt scrap'' (from plants manufacturing steel products), and 49 percent post-consumer scrap. The primary source of post-consumer scrap is the automobile, and in 2004, the steel industry recycled 14.2 million tons of iron and steel scrap from 14 million vehicles.

B. What are the production processes and emissions sources?

Most EAF are equipped with three carbon electrodes that are raised or lowered through the furnace roof. When the electrodes are retracted, the furnace roof can be rotated to allow the charge of scrap steel by an overhead crane. Electric current that is passed between the electrodes and through the scrap generates heat to melt the scrap. The stages of each production cycle include charging (loading scrap and other raw materials into the furnace), melting, removing slag (a layer of impurities that forms on top of the molten steel), and tapping (pouring molten steel into a ladle). Operating cycles in this batch process range from 35 to more than 200 minutes; the longer cycle times are generally used when producing stainless and specialty steels. After tapping, the steel is transferred to the ladle metallurgy facility where it undergoes additional refining in a ladle to produce the desired final properties. After the composition and temperature are adjusted in the ladle metallurgy facility, the molten steel is transferred to the continuous caster, which forms the steel into semi-finished shapes. The steel shapes are then processed in rolling mills to produce the final steel product.

Emissions from the EAF occur during charging, melting, and tapping. Emissions may also occur when the molten steel is processed at the ladle metallurgy facility. The type and volume of emissions of HAP metals are affected by the quantity and type of HAP metals in the ferrous scrap being melted and the addition of certain alloys (e.g., chromium, manganese, and nickel). Some HAP metals, such as manganese, are an inherent and necessary component of ferrous scrap and the final steel product. Other HAP metals, such as mercury, arsenic, and cadmium, are undesirable elements introduced with the ferrous scrap. Other HAP metals, such as chromium and nickel, are introduced as alloying elements and are necessary to produce stainless and specialty steels.

Capture systems for emissions from EAF typically include direct-shell evacuation control (DEC) systems; canopy hoods, side draft hoods, and tapping hoods; partial or total enclosures; scavenger duct systems; and building evacuation systems. The most common types of capture systems for ladle metallurgy are canopy hoods, side draft hoods, and close fitting hoods. Nearly all plants duct process and fugitive emissions to a baghouse. These capture systems and PM control devices are highly efficient for the capture and control of PM and HAP metals that are in particulate form, including the Urban HAP arsenic, cadmium, chromium, lead, manganese, and nickel. However, mercury emitted from the EAF is in vapor form and is not controlled by the PM control devices.

A detailed survey of 27 plants showed that EAF steelmaking facilities use scrap specifications, scrap management plans, and inspections to ensure that charge materials do not adversely affect the quality of steel or create dangerous operating conditions. Common requirements include testing for radiation; rejecting scrap containing sealed containers, hazardous materials, or explosives; and prohibiting materials such as lead, copper, oil, grease, batteries, and refrigerants. Most plants also require some type of visual inspection of incoming scrap. These scrap management procedures also serve to reduce HAP emissions by preventing HAP materials and precursors from entering the EAF and subsequently being emitted.

C. Summary of the Proposed Requirements

This section presents a summary of the requirements of the proposed rule. Additional details and the rationale for the proposed requirements are provided in the following section IV.D of this preamble.

1. Applicability and Compliance Dates

The proposed NESHAP applies to each new or existing EAF steelmaking facility that is an area source of HAP. We are proposing that the owner or operator of an existing area source that does not have to install or modify emissions control equipment to meet the opacity limit for fugitive emissions comply with all applicable rule requirements no later than six months after the date of publication of the final rule in the **Federal Register**. We are proposing that the owner or operator of an existing area source that must install

or modify emission control equipment to meet the opacity limit for fugitive emissions may request a compliance date for the opacity limit that is no later than two years after the date of publication of the final rule in the **Federal Register** based on a demonstration to the satisfaction of the permitting authority that the additional time is needed. The owner or operator of a new affected source would be required to comply with all applicable rule requirements by the date of publication of the final rule in the **Federal Register** (if the startup date is on or before promulgation) or upon startup (if the startup date is after promulgation).

2. Proposed MACT Standards for the Control of Mercury

The proposed standards for mercury are based on pollution prevention and require an EAF owner or operator who melts scrap from motor vehicles either to purchase (or otherwise obtain) the motor vehicle scrap only from scrap providers participating in an EPA-approved program for the removal of mercury switches or to fulfill the alternative requirements described below. EAF facilities participating in an approved program must maintain records identifying each scrap provider and documenting the scrap provider's participation in the EPA-approved mercury switch removal program. A proposed compliance option is for the EAF facility to prepare and operate pursuant to an EPA-approved site-specific plan that includes specifications to the scrap provider that mercury switches must be removed from motor vehicle bodies at an efficiency comparable to that of the EPA-approved mercury switch removal program (see below). An equivalent compliance option is provided for facilities that do not utilize motor vehicle scrap that contains mercury switches.

We expect most facilities that use motor vehicle scrap will choose to comply by purchasing motor vehicle scrap only from scrap providers who participate in a program for removal of mercury switches that has been approved by the Administrator. The National Vehicle Mercury Switch Recovery Program (NVMSRP) [11] would be an approved program under this proposed standard. Facilities choosing to use the NVMSRP as a compliance option would have to assume all of the responsibilities for steelmakers as described in the Memorandum of Understanding. The NVMSRP is described in detail in section IV.D.1 of this preamble.

EAF facilities could also obtain scrap from scrap providers participating in other programs. To do so, the facility owner or operator would have to submit a request to the Administrator for approval to comply by purchasing scrap from scrap providers that are participating in another switch removal program and demonstrate to the Administrator's satisfaction that the program meets the following specified criteria: (1) There is an outreach program that informs automobile dismantlers of the need for removal of mercury switches and provides training and guidance on switch removal, (2) the program has a goal for the removal of at least 80 percent of the mercury switches, and (3) the program sponsor must submit annual progress reports on the number of switches removed and the estimated number of motor vehicle bodies processed (from which a percentage of switches removed is easily derivable).

EAF facilities that purchase motor vehicle scrap from scrap providers that do not participate in an EPA-approved mercury switch removal program would have to prepare and operate pursuant to and in conformance with a site-specific plan for the removal of mercury switches. The facility's scrap specifications would have to include a requirement for the removal of mercury switches, and the plan must include provisions for obtaining assurance from scrap providers that mercury switches have been removed. The plan would be submitted to the Administrator for approval and would demonstrate how the facility will comply with specific requirements that include: (1) A means of communicating to scrap purchasers and scrap providers the need to obtain or provide motor vehicle scrap from which mercury switches have been removed and the need to ensure the proper disposal of the mercury switches, (2) provisions for obtaining assurance from scrap providers that motor vehicle scrap provided to the facility meets the scrap specifications, (3) provisions for periodic inspection, site visits, or other means of corroboration to ensure that scrap providers and dismantlers are implementing appropriate steps to minimize the presence of mercury switches in motor vehicle scrap, (4) provisions for taking corrective actions if needed, and (5) requiring each motor vehicle scrap provider to provide an estimate of the number of mercury switches removed from motor vehicle scrap sent to the facility during the previous year and the basis for the estimate. The Administrator would be able to request documentation or additional information from the owner or operator at any time. The site-specific plan must establish a goal for the removal of at least 80 percent of the mercury switches. All documented and verifiable mercury-containing components removed from motor vehicle scrap would count towards the 80 percent goal.

An equivalent compliance option would be provided for EAF steelmakers who do not utilize motor vehicle scrap that contains mercury. The option would require the facility to certify that the only materials they are charging from motor vehicle scrap are materials recovered for their specialty alloy, such as chromium in certain exhaust systems. Such materials are known not to contain mercury, and because the specialty steels must meet stringent product quality and performance specifications, automobile scrap with contaminants such as mercury, lead, zinc, and copper is not accepted.[12]

3. Proposed GACT Standards for EAF and Ladle Metallurgy Operations

We propose that the owner or operator would be required to install, operate, and maintain capture systems for EAF and ladle metallurgy operations that convey the collected gases and fumes to a venturi scrubber or baghouse for the removal of PM. We are proposing separate emissions limits for new and existing EAF steelmaking facilities that produce less than 150,000 tpy of stainless or specialty steel, and for larger, non-specialty EAF steelmaking facilities. The small facilities would be required to comply with a PM emissions limit of 0.8 pounds of PM per ton (lb/ton) of steel for each control device serving an EAF or ladle metallurgy operation and an opacity limit of 6 percent for melt shop emissions. All other EAF steelmaking facilities (both existing and new) would be required to meet a PM limit of 0.0052 grains per dry standard cubic foot (gr/dscf) for emissions from a control device for an EAF or ladle metallurgy operation. The opacity of emissions from melt shops from these sources would be limited to 6 percent.

Performance tests would be required for each emissions source to demonstrate initial compliance with the

[11] Additional details can be found at *http://www.epa.gov/mercury/switch.htm* and in section IV.D.1 of this preamble. In particular, see the signed Memorandum of Understanding.

[12] Letter from Joseph Green, Counsel to the Specialty Steel Industry of North America, to Steve Fruh, Environmental Protection Agency. Information Regarding Specialty Steel Industry Segment. July 30, 2004.

PM and opacity limits. Provisions are included in the proposed rule for conducting the tests. The owner or operator of an existing EAF steelmaking facility would be allowed to certify initial compliance with the emissions limits if a previous test was conducted during the past 5 years using the methods and procedures in the rule and either no process changes have been made since the test, or the owner or operator can demonstrate that the test results, with or without adjustments, reliably demonstrate compliance despite process changes.

All EAF steelmaking facilities would be required to obtain a title V permit. The proposed rule would require each EAF steelmaking facility to monitor the capture system, PM control device, and melt shop; maintain records; and submit reports according to the compliance assurance monitoring (CAM) requirements in 40 CFR part 64. The existing part 64 rule requires the owner or operator to establish appropriate ranges for selected indicators for each emissions unit (*i.e.*, operating limits) such that operation within the ranges will provide a reasonable assurance of compliance with the emissions limitations or standards.

The CAM rule requires the owner or operator to submit certain monitoring information to the permitting authority for approval. This information includes: (1) The indicators to be monitored; (2) the ranges or designated conditions for such indicators, or the process by which such indicator ranges or designated conditions will be established; (3) performance criteria for the monitoring; and if applicable, (4) the indicator ranges and performance criteria for a CEMS, COMS, or predictive emissions monitoring system. The owner or operator also must submit a justification for the proposed elements of the monitoring control device (and process and capture system, if applicable) and operating parameter data obtained during the conduct of the applicable compliance or performance test.

If monitoring indicates that the unit is operating outside of the acceptable range established in its permit, the owner or operator must return the operation to within the established range consistent with 40 CFR 64.7(d).

4. Proposed GACT Standards for Scrap Management

In addition to meeting PM and opacity limits reflecting GACT, we are also proposing that EAF facilities be required to restrict the use of certain scrap or follow a pollution prevention plan for scrap inspection and selection that minimizes the amount of specific contaminants in the scrap.

The proposed requirements are based on two pollution prevention approaches depending on the type of scrap that is used, and a facility may have some scrap subject to one approach and other scrap subject to the other approach. One provision is for scrap that does not contain certain contaminants and would simply prohibit the processing of scrap containing these contaminants (restricted scrap). Compliance would be demonstrated by a certification that the owner or operator will not process scrap with the contaminants. This scrap management approach is expected to be most useful to stainless and specialty steel producers with stringent scrap specifications that do not permit the use of motor vehicle scrap and scrap containing free organic liquids. The other approach for scrap that may contain certain contaminants is more prescriptive and requires a pollution prevention plan, scrap specifications, and procedures for determining that these requirements are met. This pollution prevention approach was developed primarily for carbon steel producers that accept motor vehicle scrap and many other types of ferrous scrap.

Under the restricted scrap provision, the plant owner or operator would agree to restrict the use of certain scrap, including metallic scrap from motor vehicle bodies, engine blocks, oil filters, oily turnings, machine shop borings, transformers and capacitors containing polychlorinated biphenyls (PCBs), lead-containing components, chlorinated plastics, or free organic liquids. The restriction on lead-containing components would not apply to the production of leaded steel (where lead is obviously needed for production).

The other proposed scrap management provision would require the plant owner or operator to prepare a pollution prevention plan for metallic scrap selection and inspection to minimize the amount of chlorinated plastics, lead (except for the production of leaded steel), and free organic liquids. This plan would be submitted to the Administrator for approval. The owner or operator would be required to keep a copy of the plan onsite and train plant personnel with materials acquisition or inspection duties in the plan's requirements.

The plan would include specifications for scrap materials to be depleted (to the extent practicable) of lead-containing components (except for the production of leaded steel), undrained used oil filters, chlorinated plastics, and free organic liquids. The plan would also contain procedures for determining if these requirements are met (*e.g.*, visual inspection or periodic audits of scrap suppliers) and procedures for taking corrective actions with vendors whose shipments are not within specifications.

5. Proposed Requirements for Recordkeeping and Reporting

Area sources subject to the proposed requirements for EAF and ladle metallurgy operations would be subject to the recordkeeping and reporting requirements of the part 64 CAM rule. The general recordkeeping requirements of the part 64 rule directs the owner or operator to comply with the recordkeeping requirements for title V operating permits in 40 CFR 70.6(a)(3)(ii), which require records of analyses, measurements, and sampling data. The part 64 rule also requires the owner or operator to maintain records of monitoring data, monitor performance data, corrective actions taken, any written quality improvement plan (QIP), any activities undertaken to implement a QIP, and other supporting information required by the part 64 rule (such as data used to document the adequacy of monitoring, or records of monitoring maintenance or corrective actions).

The general reporting requirements of part 64 require the owner or operator to submit monitoring reports to the permitting authority in accordance with the requirements for facilities with title V operating permits. The title V reporting requirements in 40 CFR 70.6(c)(1) and 40 CFR 71.6(c)(1) include a 6-month monitoring report, deviation reports, and annual compliance certifications. The reporting requirements under part 64 requires that the 6-month monitoring report include: (1) Summary information on the number, duration and cause (including unknown cause, if applicable) of excursions or exceedances, as applicable, and the corrective actions taken; (2) summary information on the number, duration and cause (including unknown cause, if applicable) for monitor downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable); and (3) a description of the actions taken to implement a QIP during the reporting period. Upon completion of a QIP, the owner or operator must include in the next summary report documentation that the implementation of the plan has been completed and reduced the likelihood of similar levels of excursions or exceedances occurring.

All EAF steelmaking facilities subject to this proposed NESHAP would also be subject to certain specified requirements

of the NESHAP general provisions (40 CFR part 63, subpart A). The general provisions include requirements for initial notifications; startup, shutdown, and malfunction records and reports; recordkeeping; and semiannual excess emissions and monitoring system performance reports. The information required in these records and reports is similar to the information required by the CAM rule (40 CFR part 64) and the operating permits rules (40 CFR parts 70 and 71).

The proposed NESHAP also includes specific recordkeeping and reporting requirements for area source facilities subject to requirements for control of contaminants from scrap. The area source facilities would be required to keep records to demonstrate compliance with the requirements for their pollution prevention plan for minimizing the amount of chlorinated plastics, lead, and free organic liquids charged to a furnace or for the use of only restricted scrap and the site-specific plan for mercury or any of the mercury compliance options.

As noted above, facilities subject to the site-specific plan for mercury would be required to keep records and submit semiannual reports on the number of mercury switches removed by the scrap provider or the weight of mercury recovered from those switches, an estimate of the percent of mercury switches recovered, and certification that the recovered mercury switches were managed at RCRA-permitted facilities. In contrast, facilities participating in an EPA-approved program for switch removal must keep records that identify their scrap providers and document that they participate in an approved switch removal program. As discussed in more detail in section IV.D.1 of this preamble, we are proposing to require more extensive records for a site-specific plan than for an approved program because extensive recordkeeping, reporting, and measurement of success are already required for approval of such a removal program, the NVMSRP being the prime example.

All facilities subject to the requirements for the control of contaminants from scrap would be required to submit semiannual reports according to the requirements in § 63.10(e) of the general provisions. The report would identify any deviation from the rule requirements and the corrective action taken.

D. What is our rationale for the proposed MACT and GACT standards?

1. Proposed MACT Standard for Mercury

Background. Mercury enters the EAF steelmaking process almost exclusively with the ferrous scrap that is charged to the furnace. A few other materials are charged to the EAF in small quantities (*e.g.*, coke, coal, lime); however, they contribute little mercury because they are used in very small quantities relative to the scrap charge and contain virtually no mercury in any case. The major source of mercury in ferrous scrap is convenience light switches in end-of-life vehicles that contain 0.8 grams (g) to 1.2 g of mercury per switch. These switches (called mercury switches or tilt switches) control lights under the hoods and in the trunks of older model vehicles. The Ecology Center estimated that the vehicles retired in 2003 contained 8.5 million switches and 9.3 tons of mercury. Pilot studies in New Jersey and Michigan reported 0.54 to 0.8 mercury switches per vehicle processed. For 14 million vehicles recycled in 2004, the number of switches thus would be in the range of 7.6 to 11 million. Although mercury switches were phased out of automobiles in 2002, there is a 10 to 15 year supply of existing vehicles destined for recycling that still contain the switches. There are other components in automobile scrap which contain small amounts of mercury, such as anti-lock braking sensors, security systems, and active ride control systems. However, most of the mercury is contributed by convenience light switches, which are estimated to be the source of 87 percent of the mercury in motor vehicle scrap by the Ecology Center.[13]

We have very limited data on the mercury species emitted from EAFs; however, the limited data indicate that over 99 percent of the mercury emissions are in the gaseous form, and about 93 percent of the gaseous mercury is elemental mercury. Although baghouses are highly efficient at removing HAP metals that are in the particulate phase, the baghouses do not control gaseous or vapor phase mercury and thus (for practical purposes) do not control mercury emissions from EAFs. No EAFs use add-on controls for gaseous mercury emissions.

The limited test data show extreme variability (orders of magnitude) in mercury emissions from plant to plant and from the same plant over time as different batches of scrap are melted. The limited sampling results of input materials likewise indicate that the mercury content of scrap typically varies widely.[14]

We also examined scrap specifications that may be in use to reduce mercury emissions. Three companies reported in their survey responses that their scrap specifications prohibited mercury-containing components. However, there was no measure of effectiveness of the written specification.

Over the past few years, there has been an increasing awareness that a highly effective way of reducing mercury releases to the environment from scrap using entities like EAFs is to remove mercury switches from end-of-life vehicles prior to crushing, shredding, and melting. Numerous interested parties have been involved at the local, State, and national level in the development and implementation of switch removal programs, including local and State environmental agencies, national and local environmental groups, steel recyclers, steel producers, automobile makers, various EPA offices, and others. Many successful State and local switch removal programs are already in place, and more are expected in the future.

Several State programs for mercury switch removal have been implemented, and there are many different variations. Some programs are mandated by law, and others are voluntary. Some offer financial incentives provided by different stakeholders, some specify financial incentives to be provided by automobile makers, and some have no financial incentives. Some have a strict accounting of switches removed and requirements for proper collection, management, and disposal of the switches.

There have been direct measurements of the mercury emission reductions that can be achieved at minimills by switch removal programs. For example, a pilot program administered by the New Jersey Department of Environmental Protection reported a reduction of 50 percent in mercury emissions when the EAF melted scrap that had been processed in a switch removal program.[15] We also identified one minimill in Minnesota that had implemented a mercury switch removal program that included removal prior to processing in their on-site shredder and a system for paying other

[13] The Ecology Center report and other information cited for mercury switches is available in EPA Docket ID No. EPA–HQ–OAR–2004–0083.

[14] See ''Analysis of Mercury Emissions Test Data'' in Docket ID No. EPA–HQ–OAR–2004–0083.

[15] ''Mercury Switch Data Collection Pilot Project.'' Prepared by K.L. Woodruff. New Jersey Department of Environmental Protection. March 24, 2004.

scrap suppliers to remove switches. This program has resulted in a quantifiable reduction in environmental releases of mercury. These two studies confirm that a national mercury switch removal program for end-of-life vehicles will reduce mercury emissions.

Switch removal programs reduce mercury releases to all media. Switch removal reduces mercury releases to air, water, and land when automobiles are crushed and shredded prior to delivery to the minimills. Mercury contamination of auto shred residue (plastics, fabrics, and other unwanted materials in the automobile) is reduced making safer the further management of the material. The switches themselves are isolated and managed in RCRA subtitle C hazardous waste management facilities where they are subject to stringent regulatory control. As a result of the mercury switch removal programs, mercury emissions are reduced at all facilities which use the scrap as raw material, including not only EAFs but integrated iron and steel plants and iron and steel foundries. Finally, mercury emissions are reduced from scrap that is exported and melted in furnaces in other countries.

The National Vehicle Mercury Switch Recovery Program (NVMSRP).[16] A significant step forward in reducing mercury emissions was made on August 11, 2006 when a Memorandum of Understanding (MOU) was signed by representatives of the steel industry, automobile makers, scrap recyclers, environmental groups, State and local agencies, and EPA.[17] The MOU established the NVMSRP, and this program has been implemented and is already removing and recovering mercury switches from end-of-life vehicles before the metallic scrap is recycled at EAFs (and other steel-producing entities).

The NVMSRP is the result of a two-year collaborative effort involving EPA, the End of Life Vehicle Solutions Corporation (ELVS),[18] the American Iron and Steel Institute, the Steel Manufacturers Association, the Institute of Scrap Recycling Industries, the Automotive Recyclers Association, Environmental Defense, the Ecology Center (Ann Arbor), and representatives of the Environmental Council of the States. The goal of the NVMSRP is to significantly reduce air emissions of mercury from steelmaking facilities that utilize auto shred by substantially reducing the number of mercury-containing switches in scrap automobiles before they are crushed and shredded for recycling. This is being accomplished through education and outreach for those removing switches; removal, collection and management of switches; transport of the switches to a qualified retorter that has the permits that allow for managing the switches under RCRA subtitle C; recordkeeping and accountability of mercury recovery; scrap selection and corroboration; and review and improvement of the NVMSRP. The vehicle manufacturers and steelmakers have created a three-year, $4 million dollar implementation fund in support of the program. The fund will support the implementation of the NMSRP through incentive payments to those entities recovering (i.e. pulling) the switches. Performance will be assessed on a regular basis by all of the participating parties.

Finally, the MOU contains a provision providing that the agreement may terminate with the consent of the parties based on the phase out of automobiles containing mercury switches. A potential termination date mentioned in the MOU is December 31, 2017, a date when it is projected that 90 percent of vehicles containing mercury switches will be retired.[19] EPA believes that any issues raised by this potential ''sunset'' provision are best addressed when EPA reexamines the MACT standard pursuant to section 112(d)(6) (which must occur no later than 2015). At that time, there will be robust information available as to switch removal rates and rate of fleet retirement.

The NVMSRP was designed to harmonize with existing State programs and to be implemented State-by-State by the participants, in consultation with appropriate State agencies, in the remaining States to form a coordinated national program. The NVMSRP has shown success in just a few months following the MOU. As of July 9, 2007, programs were operational in 45 States, and 5,633 participants have collected more than 575,841 mercury switches with 1,267 pounds of mercury. Programs are expected to be implemented in all of the remaining States in 2007.

Proposed MACT floor determination. More than 12 percent of the EAF steelmaking facilities are participants in this national program and have been participants in previous State and local programs. We believe that these operations pursuant to the national program represent the best performers and best performance for mercury—the chief source of mercury in emissions is being removed from feedstock—so that the MACT floor for new and existing EAF steelmaking facilities is for the owner or operator to operate pursuant to such a program; i.e., to obtain scrap only from scrap providers that are first removing mercury switches pursuant to the national program or an equivalent program of demonstrably equal effectiveness.[20] We are also proposing that a switch removal program is the MACT floor for new sources because the best-controlled similar source is among those that prevent mercury switches from entering with the scrap.

We examined the features of the NVMSRP and other switch removal programs to identify those features that would be the necessary components of a national emission standard to ensure that the program would be effective at reducing mercury emissions. These features include assurance that each

[16] This section describes the national switch recovery program in detail. As discussed in the following sections of this preamble, the proposed rule does not codify these details as part of the proposed standard for mercury emissions. The proposed rule requires the owner or operator to: (1) Certify they are participants in the national program and that scrap is purchased only from scrap providers participating in such a national program, (2) maintain records documenting such participation, and (3) submit semiannual reports if there are any deviations from the requirements. However, the proposed rule also allows an owner or operator to comply with the proposed rule if they can demonstrate that they are participating in a program that is equivalent to the national program and is of demonstrably equal effectiveness.

[17] Additional details and the signed Memorandum of Understanding can be found at *http://www.epa.gov/mercury/switch.htm.*

[18] ELVS is a non-profit corporation established by several motor vehicle manufacturers who are listed at *http://www.elvsolutions.org/about.htm.*

[19] The MOU states ''The NVMSRP will be implemented until December 31, 2017 based on estimates that 90% of the vehicles containing mercury switches would be retired by that time. If, before that date, based on Program data and other information, the Parties or their designees determine that the number of remaining Mercury Switches no longer constitutes a significant source of mercury, they may determine that the program should end. In such a case, the Parties may terminate this MOU through written notice to all signatories and Participants. If the Parties or their designees determine that the number of mercury switches is still significant after that date, they may extend the Program. If the Program is extended, the Parties and U.S. EPA may continue this MOU through written mutual consent of all parties and U.S. EPA.''

[20] We estimate that the mercury switch removal program will reduce mercury emissions to below 90 mg Hg/ton of steel produced (based on two State pilot program studies showing approximately 50 percent reduction from switch removal and average baseline mercury emissions of 180 mg Hg/ton), which results in an estimated reduction of 5 tpy of mercury. For perspective, 90 mg/ton of steel corresponds to a trace mercury level of 0.1 ppm in the steel scrap or the equivalent of about one mercury switch (one gram or 1,000 mg of mercury) per 10 tons of steel scrap (about one switch per ten end-of-life vehicles at one ton of steel per vehicle). In contrast, we estimate that the MACT floor based on our limited mercury emissions test data, which comes from a time when switch removal agreements were not in place, would be 650 mg Hg/ton of steel. Additional details are provided in ''Analysis of Mercury Emissions Test Data'' in Docket ID No. EPA–HQ–OAR–2004–0083.

facility is participating in a switch removal program that has been approved by the Administrator, a program goal for the percent of switches removed (80 percent), a system that accounts for the number of switches (or quantity of mercury) removed and the number of vehicle bodies processed, a mechanism to ensure the switches are properly disposed of or recycled, and an outreach program that informs dismantlers of the need for removal of mercury switches and provides training and guidance for removal. The national program has these features, and we are proposing that these features represent the MACT floor for mercury for new and existing sources because this is the mercury control approach that is being used by the best-performing sources.

The national program also has a mechanism to measure performance because the number of switches and amount of mercury recovered is reported by State, and from an estimate of the number of vehicles processed, the progress toward the goal of 80 percent removal can be determined. The MOU also includes ongoing measures to track and measure progress. For example, the parties will assess development and implementation of State plans and identification and participation of program participants at three-month intervals for the first year following the effective date of the MOU. At six-month intervals thereafter, the parties will collectively review by State the status of implementation and participation in the program and make adjustments as necessary. The indicators to be reviewed will include the status of plans for 50-State implementation, number of States where the program has been initiated, the status of Web-based information on the NVMSRP, the status of identification of dismantlers and dismantler participation in all States (starting with those States targeted for initial implementation), and the status of the mercury recovery database and rate of information collection.

The parties to the MOU expect that in the first three years of the program, capture rates will be ramping up due to the realities of program implementation and will not fully achieve the 80 to 90 percent switch recovery rate goal. It is expected that a minimum of four million mercury switches will be recovered during the first three years of the program in addition to the mercury being recovered by existing State programs. The parties agreed to make every effort to exceed this amount through aggressive implementation of the responsibilities detailed in this agreement.

One year following the effective date of the MOU and each year thereafter, the parties or their designees and EPA agreed to meet to review the effectiveness of the program at the State level based upon recovery and capture rates. The parties to the agreement agreed to use the results to improve the performance of the program and to explore implementation of a range of options in that effort. Two and one-half years from the inception of the program, the parties agreed to meet and review overall program effectiveness and performance. This review will include discussion of the number of switches that have been collected and what factors have contributed to program effectiveness.

A key element of measuring the success of the program is maintaining a database of participants that has detailed contact information, documentation showing when the participant joined the program (or started submitting mercury switches), records of all submissions by the participant including date, number of mercury switches, and confirmation that the participant has submitted mercury switches as expected. Another important element is aggregated information to be updated on a quarterly basis, including progress reports, summaries of the number of program participants by State, individual program participants, and State and national recovery totals. The program is also estimating the number of motor vehicles recycled. The NVMSRP will issue reports quarterly during the first year of the program, every six months in the second and third year of the program, and annually thereafter. The reports prepared by ELVS will include the total number of dismantlers or other potential participants identified; the total number of dismantlers or others contacted; and the total number of dismantlers or others participating. The annual report will include the total mercury (in pounds) and number of mercury switches recovered nationwide; the total pounds of mercury, number of mercury switches, and an estimated national capture rate, with information organized by State, compared with the expected range of mercury switch retirement rates for each State; and the total number and identity of dismantlers or others dropped due to inactivity or withdrawal from the program.

Facilities choosing to use the NVMSRP to comply with this proposed standard would have to assume all of the responsibilities for steelmakers as described in the MOU and take steps consistent with the NVMSRP to minimize the presence of mercury in scrap from end-of-life vehicles. Participating steelmakers were to initiate the following steps when the NVMSRP went into effect:

- Issue a statement that the individual steel company is participating in the NVMSRP.
- Acting independently, develop a plan demonstrating the manner through which it is participating in the NVMSRP. The plan should include facility-specific implementation elements, corporate-wide policies, and/or efforts coordinated by a trade association as appropriate for each facility.
- Provide in the plan documentation of direction to appropriate staff to communicate to suppliers the need to promote the NVMSRP with suppliers throughout the scrap supply chain. The steel mill should be able to provide examples of materials that it uses for outreach to suppliers, such as letters, contract language, policies for purchasing agents, and scrap inspection protocols.
- Strongly encourage their suppliers and others in the scrap supply chain to support and participate in the NVMSRP.
- Take steps to minimize the presence of mercury in scrap, which includes notifying suppliers that the steelmaker, acting independently pursuant to the NVMSRP, intends to use in their operations, to the maximum extent possible, scrap from vehicles which do not contain mercury switches or from which mercury switches have been removed and to adapt their respective purchasing practices to that end.
- Use the ELVS database or other appropriate means to demonstrate that suppliers (spot suppliers and those under continuous contracts) are participating as anticipated in the NVMSRP and periodically re-affirm their commitment to provide only reduced-mercury automobile scrap. Steelmakers will conduct occasional spot checks, site visits or other means of corroboration to ensure that suppliers are aware of the need and are implementing appropriate steps to minimize the presence of mercury in automobile scrap.
- Cooperate with ELVS in the development of education, training materials, and outreach where appropriate.
- Work with the Institute of Scrap Recycling Industries to assure that any scrap work practice standards or other programs that may be implemented in accordance with the NVMSRP take into account market and technological factors and do not create unreasonable

or unworkable certification requirements for scrap processors.

We propose that the Administrator can evaluate the success of the program at any time, identify States where improvements might be needed, recommend options for improving the program in a particular State, and if necessary, disapprove the program as implemented in a State from being used to demonstrate compliance with this proposed rule based on an assessment of this performance. The evaluation would be based on progress reports submitted to the Administrator that provide the number of mercury switches removed, the estimated number of vehicles processed, and percent of mercury switches recovered. The Administrator will assess the information with respect to the program's goal for percent switch recovery and trends in recovery rates.

Although the national program would be an EPA-approved program for the purpose of complying with the proposed MACT standard, other State, local, or facility-specific programs could qualify as a compliance option on a case-by-case basis if they met the same criteria. Consequently, we also are proposing as the MACT floor participation in these other programs after satisfying criteria based on the national program, i.e., showing that these other programs would assure the same level of mercury control that the national program utilized by the best existing performers achieves, that would be used by the Administrator to determine if other switch removal programs could be used to demonstrate compliance.

For example, we are proposing that a facility could prepare and operate pursuant to a site-specific plan for the removal of mercury switches and establish scrap specifications for the removal of mercury switches to achieve the MACT level of control (i.e., control as effective as the national plan). The plan would be submitted to the Administrator for approval and would demonstrate how the EAF steelmaking facility will comply with the following specific requirements: (1) A means of communicating to scrap purchasers and scrap providers the need to obtain or provide motor vehicle scrap from which mercury switches have been removed and the need to ensure the proper management of the removed mercury switches, (2) provisions for obtaining assurance from scrap providers that motor vehicle scrap provided to the EAF meets the scrap specifications, (3) provisions for periodic inspection, site visits, or other means of corroboration for the EAF to ensure that scrap providers and dismantlers are implementing appropriate steps to minimize the presence of mercury switches in motor vehicle scrap, (4) a goal for the removal of at least 80 percent of the mercury switches, (5) provisions for taking corrective actions if needed, and (6) requiring each motor vehicle scrap provider to provide an estimate of the number of mercury switches removed from motor vehicle scrap sent to the facility during the previous year and the basis for the estimate. The Administrator would be able to request documentation or additional information and change the approval status of the plan at any time based on a review of progress toward meeting the switch removal goal and other factors.

We developed an equivalent compliance option (also based on pollution prevention) for steelmakers who do not purchase motor vehicle scrap that contains mercury switches. The compliance option would require the facility to certify that the only materials from motor vehicle scrap are materials recovered for their specialty alloy, such as chromium in certain exhaust systems, and that the type of scrap is not reasonably expected to contain mercury switches.

Proposed beyond-the-floor determination. As a beyond-the-floor option, we considered the upstream removal of mercury-containing components other than mercury switches. There is no practical or reasonable way to remove trace amounts of mercury entering with raw materials (such as fluxing agents and alloys) other than scrap. Although there are other components in automobile scrap containing small amounts of mercury (see the earlier discussion above), pilot studies by various States have found that most of the mercury is contributed by the mercury switches, which take only a few minutes to locate and remove. (See the reports of switch removal studies in Maine, New Jersey, and Michigan in the rulemaking docket.) Other mercury-containing components contribute less mercury, and they are more difficult to locate, identify, and remove. For example, the mercury switch study performed by the New Jersey Department of Environmental Protection found that convenience light switches could be located and removed in less than one minute. However, the time to remove and locate switches in anti-lock braking systems (ABS) required 7 to 8 minutes to locate, remove the rear seat, unbolt the unit, and remove it. In some cases, no ABS mercury switches were found. Some vehicles had to be raised on lifts, which required 10 to 15 minutes to locate and remove the ABS switch. In other cases, the ABS mercury bullet could not be removed separately because it was encased in a plastic resin material. Since the removal of these other mercury-containing components is costly and not practical in many cases, we have initially determined that the removal of these other mercury-containing components is not justified as a beyond-the-floor standard. However, we propose to encourage their removal by crediting all documented and verifiable mercury-containing components removed from motor vehicle scrap (such as sensors in ABS systems, security systems, active ride control, and other applications) when evaluating progress towards the 80 percent goal.

We also examined the feasibility and cost of an add-on control device for mercury and continuous emissions monitoring as a beyond-the-floor option for mercury for existing and new sources. Activated carbon injection has been used on other somewhat similar processes (i.e., similar with respect to temperature and volumetric flow rate); however, it has never been used at EAF facilities, and thus is not a demonstrated mercury control technology for EAF facilities. The nationwide cost of activated carbon injection and monitoring on EAFs is estimated as $100 million/yr. The mercury reductions are estimated as about 5 tpy after implementation of the national mercury switch recovery program. Assuming that activated carbon injection could be applied to EAFs and would reduce the remaining mercury emissions by 90 percent (4.5 tpy), the cost effectiveness would be $22 million per ton of mercury. This cost does not include the further high cost of waste treatment and disposal noted in the next paragraph.

We also considered other factors: (1) The EAF batch process has highly variable concentrations of mercury in the exhaust gases (which results in a great deal of uncertainty with respect to cost, design, and efficiency of an add-on control system), (2) carbon injection could result in landfilling large quantities of hazardous EAF dust (since the carbon injection residue is commingled with other baghouse dust) that is currently recycled to recover its zinc value (see *American Petroleum Inst.* v. *EPA,* 906 F. 2d 729, 734, 740–41 (D.C. Cir. 1990) and 53 FR 11752–11753, August 17, 1988) because the mercury would either be re-emitted at the zinc smelter (in which case there would effectively be no further reduction of mercury emissions) or the baghouse dust which is otherwise

recyclable would have to be treated and disposed in a RCRA subtitle C landfill (a non-air adverse environmental impact we are required to consider under section 112(d)(2)) at a significant cost, and (3) the operation of a carbon injection (or any type of mercury emissions control device) would result in increased energy consumption (another adverse impact we are required to consider under section 112(d)(2)).

Based on the fact that activated carbon injection is not a demonstrated mercury control technology for EAF facilities, the uncertainty in design and performance of the add-on controls and hence of the actual mercury emission reductions for EAF facilities, the cost impacts per ton of emission reduction, and the adverse energy and solid waste impacts, we determined that control beyond the floor is not warranted for mercury. Therefore, we are proposing that the removal of mercury switches from the scrap before it is melted in the EAF represents MACT for mercury for new and existing EAF facilities.

2. Proposed GACT Standards for Metal HAP Other Than Mercury

Background. EAF steelmaking facilities were listed under CAA section 112(c)(3) for emissions of the Urban HAP arsenic, cadmium, chromium, lead, manganese, mercury, and nickel (67 FR 43112). As just explained in section IV.D.2 of this preamble, we are proposing a MACT standard for mercury based on its listing under CAA section 112(c)(6). For metal HAP other than mercury, we decided that it is not practical to establish individual standards for each specific type of metallic HAP that could be present in the emissions (e.g., separate standards for manganese emissions, lead emissions, and so forth for each of the metals listed as HAP that may be present) because the types and quantities of metal HAP can vary widely in the scrap. When released, each of the metallic HAP compounds other than mercury behaves as PM. The control technologies used for the control of PM emissions achieve comparable levels of performance for these metallic HAP emissions, i.e., when PM is captured, HAP metals are captured non-preferentially as part of the PM. Therefore, emission standards requiring control of PM will also achieve comparable control of metallic HAP emissions. Establishing separate standards for each individual type of metallic HAP would impose costly and significantly more complex compliance and monitoring requirements and achieve no HAP emissions reductions beyond what would be achieved using the surrogate pollutant approach based on capture and control of PM.

As provided in CAA section 112(d)(5), we are proposing standards representing GACT for the Urban HAP metals other than mercury. EPA believes that the statute allows the agency to elect to establish standards for area sources listed pursuant to section 112(c) based on GACT without further explanation. The statute simply does not set any condition precedent for issuing standards under section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to section 112(c), which is the case here. See 72 FR 38880 (July 16, 2007).

We reviewed the control technologies and management practices used by the existing EAF steelmaking facilities, and we found that all of the plants are well controlled for PM emissions and are subject to emissions limits for PM. All plants have capture systems that collect emissions from charging, melting, tapping and ladle metallurgy and route the collected gases to a PM control device. All plants have title V permits because they are major sources for criteria pollutants (hence the standards proposed today would be implemented via title V permits). In addition, all plants are subject to the CAM requirements in 40 CFR part 64.

There are a wide variety of capture systems and types of control devices that EAFs employ to achieve control of PM, and all of these systems are effective and generally available. For example, capture systems include direct-shell evacuation, canopy hoods, close-fitting hoods, side draft hoods, tapping hoods, partial enclosures, total enclosures, scavenger duct systems, building evacuation, or a combination. Control devices include many different types of baghouses (positive pressure, negative pressure, reverse air, shaker, and pulse jet) and venturi scrubbers. We concluded from our technology review that the generally available control technologies and management practices for PM emissions, and thus for emissions of HAP metals other than mercury, consist of the installation, operation, and maintenance of capture and control systems for PM emissions from charging, melting, tapping, and ladle metallurgy. Compliance assurance monitoring under 40 CFR part 64 is required for EAF facilities to ensure that the capture and control systems are properly installed, operated, and maintained on a continuing basis.

Subcategories. As part of the GACT analysis, we considered whether there were differences in processes, sizes, or other factors affecting emissions and control technologies that would warrant subcategorization. Under section 112(d)(1) of the CAA, EPA ''may distinguish among classes, types, and sizes within a source category or subcategory in establishing such standards * * *''. We found that there is a segment of the EAF steelmaking industry that is comprised of small facilities producing specialty and stainless steel. These facilities produce less than 150,000 tpy of steel per plant, and they represent 0.5 percent of the national steelmaking capacity and contribute only 0.5 percent of the HAP emissions.[21] The EAF process at these small producers is characterized by small furnaces with low volume of emissions, longer cycle times, and intermittent rather than continuous operation. In addition, they use high quality scrap that must meet specifications much more stringent than those applied to scrap for carbon steel producers. The HAP metals emitted from these facilities are primarily chromium and nickel, whereas carbon steel producers emit primarily manganese and lead. Consequently, we are proposing to develop GACT standards for two subcategories of EAF steelmaking: one for all carbon steel and large stainless and specialty steel producers and one for small stainless and specialty steel producers (i.e., less than 150,000 tpy).

Proposed GACT determination for carbon steel and large specialty steel producers. We examined emission limits in title V permits to determine if GACT for the carbon steel and large specialty steel producers could be expressed in terms of PM emission limits for control devices and opacity limits for fugitive emissions from the melt shop. The emission and opacity limits vary quite widely depending on whether the facility is in a non-attainment area for PM; whether the EAF had recently been constructed, modified, or reconstructed; EAF age; design of the capture and control system; and other factors. (Details on the permit information are provided in the rulemaking docket in the questionnaire responses for each company that was surveyed.) The most commonly-applied emissions and opacity limits are those in the new source performance standard (NSPS) in 40 CFR part 60, subpart AAa, which applies to EAFs constructed after August 7, 1983. Approximately 80 of the 91 EAF steelmaking area source facilities that we have identified are subject to the NSPS. These limits are

[21] Additional details on the characteristics of the small specialty steel plants can be found in the rulemaking docket.

0.0052 gr/dscf for the control device and a melt shop opacity limit of 6 percent (6-minute average) for fugitive emissions.

We gathered additional information on the 10 older EAFs in the carbon steel and large specialty steel subcategory that are not subject to the NSPS and found that four facilities are currently meeting the NSPS limits and six facilities are not meeting the NSPS opacity limit for fugitive emissions. We found that the facilities not meeting the NSPS opacity limit would require either new or extensively upgraded capture and control equipment to achieve the level of control required for the newer facilities subject to the NSPS. We confirmed that these facilities would need higher evacuation rates for their capture systems and new or expanded baghouse capacity. We obtained cost estimates from the plants, and we performed our own independent estimates of the cost to upgrade capture and control systems. The total nationwide capital cost to upgrade to meet the NSPS limit for opacity was estimated as $26 to $34 million.[22] The total annualized cost was estimated as $4.9 to $6.2 million per year nationwide. PM emissions would be reduced by 540 tpy, and HAP metals other than mercury would be reduced by 34 tpy. The average cost effectiveness per plant ranged from $2,000 to $14,000 per ton of PM with an overall cost effectiveness of $10,000 per ton of PM. For metal HAP other than mercury, the average cost effectiveness per plant ranged from $40,000 to $250,000 per ton with an overall cost effectiveness of $160,000 per ton of HAP. The cost effectiveness for PM is well within the range that EPA has considered acceptable for other sources, such as PM standards for mobile sources. For example, the cost effectiveness of mobile source programs adopting (quite aggressive) PM controls has ranged from $2,390 per ton of PM to $31,530 per ton of PM with estimates for three mobile source programs in the range of $10,000 to $20,000 per ton of PM (69 FR 39133, June 29, 2004).[23]

Our economic analysis indicated the facilities are owned and operated by large corporations, and all but one of these corporations operate multiple plants with EAFs. We believe that the costs of upgrades to meet the NSPS level of control for opacity are economical and would not pose adverse economic impacts on the companies. After considering the economic impacts, the reasonable costs and cost effectiveness for control of PM and HAP, and the emissions reductions that would be obtained, we have determined initially that an opacity limit of 6 percent represented the GACT level of control for this subcategory of carbon steel and large stainless and specialty steel producers.

We acknowledge that there is uncertainty in our estimates of costs, emission reductions, and cost effectiveness. The estimates of costs and cost effectiveness for the older non-NSPS plants could be higher than we have initially estimated, and if that is the case and these costs are disproportionately different from those of other sources, it might be appropriate to consider a separate subcategory based on the technical and economic feasibility (i.e., facilities constructed prior to 1983 may need to add or alter existing infrastructure, upgrade their hooding, close vents, install partitions, or re-route crane ways) of retrofitting facilities based on their age.[24] If subcategorization on this basis is appropriate, we believe that GACT for these older facilities would achieve an opacity limit of 6 percent except for 20 percent opacity during charging and tapping. This alternative standard would yield an improvement in existing performance at reasonable cost. We request comment, along with supporting documentation, on our estimates of cost and cost effectiveness and the possibility of creating a separate subcategory for older facilities and whether these costs are disproportionately different from those of other industry sources. Supporting documentation must be provided in sufficient detail to allow characterization of the quality and representativeness of the data.

We also evaluated the generally available controls and emission limits applied to emissions from control devices on EAFs and ladle metallurgy operations. A total of 80 plants are subject to and achieve the NSPS PM limit of 0.0052 gr/dscf, and the other 10 plants not subject to the NSPS have installed baghouses that can achieve the limit. Consequently, we are also proposing that the PM limit of 0.0052 gr/dscf is GACT for control devices applied to EAFs and ladle metallurgy operations.

We also considered whether additional control and emission reductions might be generally available beyond those achieved by the NSPS. The NSPS opacity limit of 6 percent is one of the most stringent Federal limits in effect for fugitive emissions and is well below the most commonly applied limit of 20 percent for fugitive emissions in State regulations. The NSPS opacity limit was based on the best-performing plants in terms of their ability to capture and control fugitive emissions. A limit more stringent than 6 percent opacity for fugitive emissions has not been applied to EAFs or other similar processes, and any limit more stringent would approach an infeasible standard of no visible emissions. Consequently, we concluded that an opacity limit of 6 percent is GACT for fugitive emissions from EAF operations.

We also considered whether a PM limit more stringent than the NSPS limit of 0.0052 gr/dscf might be achieved by all facilities using the technology described above. Although the NSPS is 20 years old, it was based on the best technology and best-performing sources at that time. The NSPS level of control is achieved by a well-designed and properly-operated baghouse with a low air-to-cloth ratio that is characteristic of baghouses in use today, and generally reflected testing of the baghouses when performing at their optimum. For example, essentially the same level of PM control (a limit of 0.005 gr/dscf) was promulgated as the MACT standard for EAFs and induction furnaces at iron and steel foundries, which melt similar scrap and have similar operating characteristics (69 FR 21924, April 22, 2004). An upgrade of existing baghouses (e.g., increasing bag filtering area to lower the air-to-cloth ratio) would result

[22] The capital cost per plant ranged from $1.5 million to $12 million, and the total annualized cost per plant ranged from $140,000 to $2.8 million per year. All estimates of impacts (e.g., costs and emission reductions) are documented in the rulemaking docket.

[23] We note that, although section 112(d) only authorizes control of hazardous air pollutants (HAP), and particulate matter (PM) is not itself a HAP but a surrogate for HAP metals, Congress expected the maximum achievable control technology (MACT) program to result in significant emissions reductions of criteria air pollutants (of which PM is one), and viewed this as an important benefit of the MACT (and residual risk) provisions. See 5 Legislative History at 8512 (Senate Committee Report) (''[w]hen establishing technology-based standards under this subsection, the Administrator may consider the benefits which result from control of air pollutants that are not listed but the emissions of which are, nevertheless, reduced by control technologies or practices necessary to meet the prescribed limitation'')

[24] See *Texas Oil and Gas Ass'n* v. *EPA*, 161 F.3d 923, 934 (5th Cir. 1998) (age as subcategorization factor under Clean Water Act); *American Iron and Steel Inst.* v. *EPA*, 568 F. 2d 244, 299 (3rd Cir. 1977) (same). Here, the year 1983 is critical since EPA promulgated new source performance standards (NSPS) for the electric arc furnace (EAF) source category in that year. Most of the industry is subject to these standards, but 10 EAFs are not, raising the question of whether these sources should be considered as a separate subcategory for purposes of determining generally available control technology (GACT). See Cf. *American Iron and Steel Inst.* v. *EPA*, 526 F. 2d 1046, 1048 (3rd Cir. 1975) (age of source may bear on technical and economic feasibility of retrofitting).

in expensive retrofit costs for a very marginal improvement in PM control. Consequently, we are proposing that the NSPS PM limit of 0.0052 gr/dscf is GACT for control devices applied to EAFs and ladle metallurgy.

Proposed GACT determination for small stainless and specialty steel producers. We also examined the control technologies used by the small stainless and specialty steel producers with a production of less than 150,000 tpy. We identified five plants in this subcategory, and all of these plants apply capture systems for emissions from charging, melting, tapping, and ladle metallurgy (i.e., the direct, non-fugitive PM emissions) and vent the captured emissions to a PM control device. Most plants use baghouses as the PM control device and meet the NSPS limit; however, one plant uses a venturi scrubber as the control device and meets a PM emission level of 0.8 lb/ton of steel produced. We performed an analysis of costs and cost effectiveness to determine if the GACT level of emission control for this subcategory should be represented by the performance of a baghouse at the NSPS level of control, the level achieved by the venturi scrubber, or some other level. The estimated capital cost to replace the venturi scrubber with a baghouse ranged from $4 to $14 million (depending on retrofit assumptions and their costs) with a total annualized cost of $0.7 to $2 million per year. PM emissions would be reduced by 27 tpy, and emissions of HAP metals other than mercury would be reduced by 4.6 tpy. The estimated cost effectiveness was $52,000 per ton of PM and $300,000 per ton of HAP. We believe that the costs and cost effectiveness are unacceptably high and that the emission reductions achieved would be low (resulting in poor cost effectiveness (which is certainly higher than those considered acceptable in the context just discussed of fugitive emission control for EAFs). We concluded that the NSPS level of PM control (0.0052 gr/dscf) does not represent GACT for this subcategory.

Consequently, we reviewed the emission control performance of the plant with the venturi scrubber. The results of four tests for PM emissions ranged from 0.4 to 0.7 lb/ton of steel with an average of 0.5 lb/ton and a standard deviation of 0.11 lb/ton. The 99th percentile of performance (the average plus 2.33 standard deviations) is 0.8 lb/ton. (The 99th percentile is the level of emission control that the plant can achieve at least 99 percent of the time, i.e., 99 percent of the test results would be below this level.) See *National Wildlife Federation* v. *EPA*, 286 F.3d 554, 572 (D.C. Cir. 2002) (reasonableness of adopting 99th percentile confidence level); *Chemical Mfr's. Ass'n* v. *EPA*, 870 F.2d, 229 (5th Cir.) (same). We are proposing a PM emission limit of 0.8 lb/ton of steel produced for this source category of small stainless and specialty steel producers based on the 99th percentile of emission control performance demonstrated by the venturi scrubber.

We also examined the control of fugitive emissions at the small stainless and specialty steel producers. All of the plants have effective capture and control systems for fugitive emissions. Although two plants are not subject to the NSPS opacity limit of 6 percent for fugitive emissions, these plants and all other plants in the subcategory can meet the NSPS limit. Consequently, we have initially determined that the NSPS limit of 6 percent for fugitive emissions from the melt shop represented GACT. As we discussed above, the NSPS opacity limit of 6 percent is one of the most stringent limits in effect for fugitive emissions and is well below the most commonly applied limit of 20 percent for fugitive emissions in State regulations. The NSPS opacity limit was based on the best performing plants in terms of their ability to capture and control fugitive emissions. Consequently, we initially concluded that an opacity limit more stringent than 6 percent for this subcategory is not warranted and would not represent GACT.

Proposed compliance monitoring. We are proposing compliance assurance monitoring as required by 40 CFR part 64 for all EAF steelmaking facilities. This proposal is based on a review of the compliance monitoring procedures that are currently in place at EAF facilities and are generally available. All EAF facilities have title V permits and are subject to the CAM requirements. The CAM rule requires the owner or operator to maintain records of monitoring data, monitor performance data, corrective actions taken, any written QIP, any activities undertaken to implement a QIP, and other supporting information required by the part 64 rule (such as data used to document the adequacy of monitoring, or records of monitoring maintenance or corrective actions). The general reporting requirements of part 64 requires the owner or operator to submit monitoring reports to the permitting authority in accordance with the requirements for facilities with title V operating permits, which include a 6-month monitoring report, deviation reports, and annual compliance certifications. The reporting requirements under part 64 require that the 6-month monitoring report include: (1) Summary information on the number, duration and cause (including unknown cause, if applicable) of excursions or exceedances, as applicable, and the corrective actions taken; (2) summary information on the number, duration and cause (including unknown cause, if applicable) for monitor downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable); and (3) a description of the actions taken to implement a QIP during the reporting period. Upon completion of a QIP, the owner or operator must include in the next summary report documentation that the implementation of the plan has been completed and reduced the likelihood of similar levels of excursions or exceedances occurring. We are proposing to adopt the extensive compliance assurance monitoring requirements in part 64 in this proposed NESHAP for EAF steelmaking facilities.

3. Proposed GACT Standards for Scrap to Control HAP Other Than Mercury

In addition to the standards for PM, EPA is proposing further measures to minimize the amount of contamination in scrap to EAFs. Our studies of industry practices indicate that many facilities have scrap specifications and procedures to minimize contaminants in the scrap. For example, emissions of the Urban HAP lead are reduced by ensuring that lead components, such as wheel weights, batteries, and cables, are removed before the scrap is processed and melted (loosely analogous to the mercury switch program discussed for mercury in that the HAP is removed from the scrap before it reaches the EAF). Although EAFs were not listed for emissions of organic Urban HAP, it is also common industry practice to limit the amount of plastics and organic liquids in the scrap, which reduces the emissions of organic HAP. Unlike mercury, bulky items such as batteries and cables, as well as dripping liquids, can often be visually detected in a scrap load. Consequently, we are proposing pollution prevention measures as GACT for lead and organic HAP. These pollution prevention measures reduce emissions beyond those achieved by the emission controls that are already in place. For example, all EAFs have PM control devices, which also control lead emissions; however, preventing lead from entering the EAF provides additional reductions even with PM controls. Similarly, some organic HAP are destroyed at the high temperatures used to melt scrap, but preventing plastics and organic liquids from entering with the scrap provides

reductions beyond that achieved by this thermal destruction.

Our survey of EAF plants indicated that all of the plants have specifications for their scrap, including measures that reduce HAP emissions by preventing certain materials from entering the EAF with the scrap. For example, some specify no non-ferrous metals, no non-metallic materials, no free-flowing oil, etc. Excluding organic materials (such as plastics and oil) and metals such as lead will reduce HAP emissions, and in the case of organics, also reduce the formation of combustion-product organic HAP at the high operating temperatures of the EAF.

It is difficult to quantify specific emissions reductions achieved by these scrap management programs. First, nearly all plants implement some sort of formal or informal scrap management program (to maintain product quality), so it is difficult to assess what the baseline emissions might be without one. Second, these scrap management programs are used in conjunction with other air emissions control technologies to reduce emissions from the EAF. The emissions reductions specifically attributable to the scrap management program are impossible to separate out. Nonetheless, it is clear that any reduction in HAP content or HAP precursors entering the EAF will reduce the emissions of HAP metals and organics from the EAF.

While a scrap management program is expected to reduce HAP emissions, it cannot be expected to eliminate all HAP elements or precursors in the scrap. First, scrap loads are generally large and difficult to inspect. A load of scrap may contain thousands of different pieces, and some scrap may be shredded and bundled. Visual inspections are only able to identify obvious off-specification materials that are on the top of a load. Second, some of the HAP elements are desirable components in the scrap iron and steel that contribute to the overall chemistry of the product and provide valuable properties in the cast metal (e.g., manganese and chromium.) Third, even undesirable HAP metals cannot be eliminated from the cast iron and steel as they are trace components in the scrap iron and steel that cannot be separated. For example, all cast iron contains trace amounts of lead (typically 0.5 to 4 percent). As such, a load of scrap meeting a ''no lead'' scrap specification does not mean that the scrap is lead-free—only that the scrap is free of lead components (e.g., batteries or wheel weights).

We have determined that the management practice of limiting the amount of organic impurities and lead in the scrap represents GACT (along with the emission controls described in the previous section of this preamble) because they are in widespread use, there is little additional cost for all plants to implement them (most already have), and there is no doubt that preventing these materials from entering the EAF will reduce emissions of the HAP which would otherwise be charged to the furnace. (A summary of the proposed scrap management practices is provided in section IV.C.4 of this preamble.)

V. Impacts of the Proposed Standards

As proposed, the standards would reduce mercury emissions from EAF by an estimated 5 tons per year (tpy) and would reduce mercury releases to the environment by 8 tpy. The proposed standards would also reduce emissions of other metallic HAP (primarily manganese with some lead, nickel and chromium) by about 34 tpy. Emissions of PM would be reduced by 540 tpy.

The capital cost of the proposed standards is estimated as $26 to $34 million. The total annualized cost of the proposed rule is estimated at $4.9 to $6.2 million/yr, including the annualized cost of capital and the annual operating costs for emission control systems. The additional cost of monitoring, reporting, and recordkeeping attributable to the proposed rule, including the preparation of scrap management plans and scrap specifications, is estimated as $122,000 per year. No adverse economic impacts are expected for large or small entities. Secondary impacts would include an increase in the generation of hazardous waste (540 tpy) and an increase in electricity usage (10,400 megawatt-hours per year) from additional fans and fan capacity associated with baghouse installations and upgrades to meet the proposed opacity standard. (All estimates of primary and secondary impacts are documented in the rulemaking docket.)

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to OMB for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in the proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR No. 2277.02.

The proposed information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards, and the recordkeeping and reporting requirements in the part 64 CAM rule, which are based on the requirements in the operating permits rule (40 CFR parts 70 and 71). These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The proposed rule requires all facilities to submit a one-time notification of applicability and notification of compliance status required by the NESHAP general provisions (40 CFR part 63, subpart A). The notification of compliance status would include compliance certifications for various rule requirements. The general provisions also require preparation of a test plan for performance tests and advance notification of the date the performance test is to be conducted.

The proposed requirements for the control of contaminants from scrap require a pollution prevention plan to minimize the amount of chlorinated plastics, lead, and free organic liquids that are charged to the furnace and submit the plan to the Administrator for approval. Facilities must keep the plan onsite and train certain employees in the plan's requirements. Alternatively, the facility must restrict the type of scrap charged to the furnace. For mercury, facilities must prepare a site-specific plan for removal of mercury switches, submit the plan to the Administrator for approval, and submit semiannual progress reports containing information on the mercury switches that have been removed would also be required. Alternatively, facilities must purchase motor vehicle scrap only from suppliers that participate in an approved program for the removal of mercury switches or recover only

material for its specialty alloy content that does not contain mercury switches. Facilities would be required to maintain records to demonstrate compliance with the selected option. Records of specific information would be required for plants electing to comply with the site-specific plan for mercury; semiannual progress reports would also be required.

All area source facilities would be required to conduct performance tests to demonstrate initial compliance with the applicable PM and opacity limits. Existing facilities would be allowed to certify initial compliance based on the results of a previous performance test that meets the rule requirements. All facilities would be required to monitor capture systems and PM control devices for EAF and ladle metallurgy operations, maintain records, and submit reports according to the part 64 CAM requirements. These reports include deviation reports, semiannual monitoring reports, and annual compliance certifications.

Consistent with § 63.6(e) of the general provisions, all plants would be required to prepare and operate by a startup, shutdown, and malfunction plan, and make an immediate report if a startup, shutdown, or malfunction was not consistent with their plan. Plants also would keep records and make semiannual reports according to the requirements in § 63.10.

The annual average monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years of this ICR) is estimated to total 2,393 labor hours per year at a cost of $121,573. This includes 2.7 responses per year from each of 91 respondents for an average of about 9.7 hours per response. There are no additional capital/startup costs or operation and maintenance costs associated with the proposed rule.

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

An agency 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 40 CFR part 63 are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for the proposed rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2004–0083. Submit any comments related to the ICR for the proposed rule to EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after September 20, 2007, a comment to OMB is best assured of having its full effect if OMB receives it by October 22, 2007. The final rule will respond to any OMB or public comments on the information collection requirements contained in the proposal.

C. Regulatory Flexibility Act

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

For the purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses at 13 CFR 121.201 (whose parent company has fewer than 1,000 employees for NAICS code 331111; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. We estimate that fewer than 9 EAF steelmaking facilities are owned by small businesses (less than 10 percent of the total facilities).

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Electric arc furnaces and ladle metallurgy operations at all EAF steelmaking facilities that are area sources are already equipped with capture systems and control devices. We have identified six plants that may have to upgrade the capture and control systems for fugitive emissions at a total capital cost of $26 to $34 million and a total annualized cost of $4.9 to $6.2 million per year. However, none of these plants are owned by small businesses. The only other additional requirements of the proposed NESHAP consist of preparing a scrap selection plan or mercury switch removal plan (if these options are selected) and maintaining records to document compliance with these requirements. The requirements of the part 63 General Provisions would include notifications, records, semiannual reports, and a startup, shutdown, and malfunction plan. The information required in these information collection requirements are very similar to the information collection requirements in 40 CFR parts 64, 70, and 71. The cost of these requirements (about $3,500 per year per facility) would not result in an adverse economic impact on any facility, large or small (i.e., the cost is less than one percent of total revenues, even for small businesses).

Although the proposed rule will not have a significant economic impact on a substantial number of small entities, we nonetheless tried to reduce the impact of the proposed rule on small entities. We held meetings with industry trade associations and company representatives to discuss the proposed rule and have included provisions such as the lb/ton limit for small facilities that address their concerns. We have also proposed to include a subcategory based partially on facility size that allows more individualized consideration of EAFs in the proposed subcategory, which include small businesses. We continue to be interested in the potential impacts of the proposed action on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local,

and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any one year. Thus, the proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the proposed rule does not significantly or uniquely affect small governments. The proposed rule contains no requirements that apply to such governments and impose no obligations upon them, and the proposed rule is not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

The proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to the proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local officials, EPA specifically solicits comments on this proposed rule from State and local officials.

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

Executive Order 13175 (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The proposed rule does not have tribal implications, as specified in Executive Order 13175. It would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The proposed rule imposes no requirements on tribal governments. Thus, Executive Order 13175 does not apply to the proposed rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rule is not subject to the Executive Order because it is based on technology performance and not on health or safety risks.

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

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that the proposed rule is not likely to have any adverse energy effects because only a slight increase in energy requirements would occur.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113, 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

This proposed rule involves technical standards. EPA is proposing to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, and 9 in 40 CFR part 60, appendix A; EPA Method 9095B, ''Paint Filter Liquids Test,'' in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, revision 2 and subsequent revisions, dated November 2004 and in Update IIIB (incorporated by reference in 63.10692—see 40 CFR 63.14); and ASTM D2216–05 and

subsequent revisions, ''Standard Test Methods for Laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass'', incorporated by reference approved for § 63.10692.

Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 5D, 9, 9095B, or ASTM D2216–05. The search and review results are in the docket for these proposed rules.

One voluntary consensus standard was identified as applicable to this proposed rule. The standard ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' is cited in this proposed rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of the exhaust gas. This part of ASME PTC 19.10–1981 is an acceptable alternative to EPA Method 3B.

The search for emissions measurement procedures identified 12 other VCS. The EPA determined that these 12 standards identified for measuring emissions of the HAP or surrogates subject to emissions standards in this proposed rule were impractical alternatives to EPA test methods. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for the determinations for the 12 methods are discussed in a memorandum included in the docket for this proposed rule.

For the methods required or referenced by this proposed rule, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures under § 63.7(f) and § 63.8(f) of subpart A of the General Provisions.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposed rule establishes national standards for the area source category.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 12, 2007.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[AMENDED]

2. Section 63.14 is amended as follows:

a. By adding paragraph (b)(63);

b. By revising paragraph (i)(1); and

c. By adding paragraph (k)(1)(iv).

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(63) ASTM D2216–05 and subsequent revisions, ''Standard Test Methods for Laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass'', IBR approved for § 63.10692.

* * * * *

(i) * * *

(1) ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus],'' IBR approved for §§ 63.309(k)(1)(iii), 63.865(b), 63.3166(a)(3), 63.3360(e)(1)(iii), 63.3545(a)(3), 63.3555(a)(3), 63.4166(a)(3), 63.4362(a)(3), 63.4766(a)(3), 63.4965(a)(3), 63.5160(d)(1)(iii), 63.9307(c)(2), 63.9323(a)(3), 63.10702, 63.11148(e)(3)(iii), 63.11155(e)(3), 63.11162(f)(3)(iii) and (f)(4), 63.11163(g)(1)(iii) and (g)(2), 63.11410(j)(1)(iii, and Table 5 to subpart DDDDD of this part.

* * * * *

(k) * * *

(1) * * *

(iv) Method 9095B, ''Paint Filter Liquids Test,'' (revision 2 and subsequent revisions), dated November 2004 and in Update IIIB, IBR approved for § 63.10692.

* * * * *

3. Part 63 is amended by adding subpart YYYYY to read as follows:

Subpart YYYYY—National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities

Applicability and Compliance Dates

Sec.

63.10680 Am I subject to this subpart?

63.10681 What are my compliance dates?

Standards and Compliance Requirements

63.10685 What are the requirements for the control of contaminants from scrap?

63.10686 What are the requirements for electric arc furnaces and ladle metallurgy operations?

Other Requirements and Information

63.10690 What parts of the General Provisions apply to me?

63.10691 Who implements and enforces this subpart?

63.10692 What definitions apply to this subpart?

Tables to Subpart YYYYY of Part 63

Table 1 to Subpart YYYYY of Part 63—Applicability of General Provisions to Subpart YYYYY

Subpart YYYYY—National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities

Applicability and Compliance Dates

§ 63.10680 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate an electric arc furnace (EAF) steelmaking facility that is an area source of hazardous air pollutant (HAP) emissions.

(b) This subpart applies to each new or existing affected source. The affected source is each EAF steelmaking facility.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source on or before September 20, 2007.

(2) An affected source is new if you commenced construction or reconstruction of the affected source after September 20, 2007.

(c) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act (CAA).

(d) If you own or operate an area source subject to this subpart, you must obtain a permit under 40 CFR part 70 or 40 CFR part 71.

§ 63.10681 What are my compliance dates?

(a) Except as provided in paragraph (b) of this section, if you own or operate

an existing affected source, you must achieve compliance with the applicable provisions of this subpart by no later than 6 months after the date of publication of the final rule in the **Federal Register**.

(b) If you own or operate an existing affected source, you must achieve compliance with the opacity limit in § 63.10686 (b)(2) or (c)(2) by no later than 2 years after the date of publication of the final rule in the **Federal Register** if you demonstrate to the satisfaction of the permitting authority that additional time is needed to install or modify emission control equipment.

(c) If you start up a new affected source on or before the date of date of publication of the final rule in the **Federal Register**, you must achieve compliance with the applicable provisions of this subpart by no later than the date of publication of the final rule in the **Federal Register**.

(d) If you start up a new affected source after the date of publication of the final rule in the **Federal Register**, you must achieve compliance with the applicable provisions of this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.10685 What are the requirements for the control of contaminants from scrap?

(a) *Chlorinated plastics, lead, and free organic liquids.* For metallic scrap utilized in the EAF at your facility, you must comply with the requirements in either paragraph (a)(1) or (2) of this section. You may have certain scrap at your facility subject to paragraph (a)(1) of this section and other scrap subject to paragraph (a)(2) of this section provided the scrap remains segregated until charge make-up.

(1) *Pollution prevention plan.* For the production of steel other than leaded steel, you must prepare and implement a pollution prevention plan for metallic scrap selection and inspection to minimize the amount of chlorinated plastics, lead, and free organic liquids that is charged to the furnace. For the production of leaded steel, you must prepare and implement a pollution prevention plan for scrap selection and inspection to minimize the amount of chlorinated plastics and free organic liquids in the scrap that is charged to the furnace. The requirements for a pollution prevention plan do not apply to the routine recycling of baghouse bags or other internal process or maintenance materials in the furnace. You must submit the scrap pollution prevention plan to the Administrator for approval. You must keep a copy of the plan onsite, and you must provide training on the plan's requirements to all plant personnel with materials acquisition or inspection duties. Each plan must include the information in paragraphs (a)(1) (i) through (iii) of this section:

(i) Specifications that scrap materials must be depleted (to the extent practicable) of undrained used oil filters, chlorinated plastics, and free organic liquids at the time of charging to the furnace.

(ii) A requirement in your scrap specifications for removal (to the extent practicable) of lead-containing components (such as batteries, battery cables, and wheel weights) from the scrap according to standard industry practice, except for scrap used to produce leaded steel.

(iii) Procedures for determining if the requirements and specifications in paragraph (a)(1) of this section are met (such as visual inspection or periodic audits of scrap providers) and procedures for taking corrective actions with vendors whose shipments are not within specifications.

(iv) The requirements of paragraph (a)(1) of this section do not apply to the routine recycling of baghouse bags or other internal process or maintenance materials in the furnace.

(2) *Restricted metallic scrap.* For the production of steel other than leaded steel, you must not charge to a furnace metallic scrap that contains scrap from motor vehicle bodies, engine blocks, oil filters, oily turnings, machine shop borings, transformers or capacitors containing polychlorinated biphenyls, lead-containing components, chlorinated plastics, or free organic liquids. For the production of leaded steel, you must not charge to the furnace metallic scrap that contains scrap from motor vehicle bodies, engine blocks, oil filters, oily turnings, machine shop borings, transformers or capacitors containing polychlorinated biphenyls, chlorinated plastics, or free organic liquids. This restriction does not apply to any post-consumer engine blocks, post-consumer oil filters, or oily turnings that are processed or cleaned to the extent practicable such that the materials do not include lead components, chlorinated plastics, or free organic liquids. This restriction does not apply to motor vehicle scrap that is charged to recover the chromium or nickel content if you meet the requirements in paragraph (b)(3) of this section.

(b) *Mercury requirements.* For each scrap provider, contract, or shipment, you must procure all motor vehicle scrap pursuant to one of the compliance options in paragraphs (b)(1), (2), or (3) of this section. You may have one scrap provider, contract, or shipment subject to one compliance option and others subject to another option.

(1) *Site-specific plan for mercury switches.* You must comply with the requirements in paragraphs (b)(1)(i) through (v) of this section.

(i) You must include a requirement in your scrap specifications for removal of mercury switches from vehicle bodies used to make the scrap.

(ii) You must prepare and operate according to a plan demonstrating how your facility will implement the scrap specification in paragraph (b)(1)(i) of this section for removal of mercury switches. You must submit the plan to the Administrator for approval. The Administrator may change the approval status of the plan upon 90-days written notice based upon the semiannual compliance report or other information. The plan must include:

(A) A means of communicating to scrap purchasers and scrap providers the need to obtain or provide motor vehicle scrap from which mercury switches have been removed and the need to ensure the proper management of the mercury switches removed from that scrap as required under the rules implementing subtitle C of the Resource Conservation and Recovery Act (RCRA) (40 CFR parts 261 through 265 and 268);

(B) Provisions for obtaining assurance from scrap providers that motor vehicle scrap provided to the facility meet the scrap specification;

(C) Provisions for periodic inspection, site visits, or other means of corroboration to ensure that scrap providers and dismantlers are implementing appropriate steps to minimize the presence of mercury switches in motor vehicle scrap and that the mercury switches removed are being properly managed, including the minimum frequency such means of corroboration will be implemented; and

(D) Provisions for taking corrective actions (*i.e.*, actions resulting in scrap providers removing a higher percentage of mercury switches or other mercury-containing components) if needed, based on the results of procedures implemented in paragraph (b)(1)(ii)(C) of this section).

(iii) You must require each motor vehicle scrap provider to provide an estimate of the number of mercury switches removed from motor vehicle scrap sent to your facility during the previous year and the basis for the estimate. The Administrator may request documentation or additional information at any time.

(iv) You must establish a goal for each scrap provider to remove at least 80 percent of the mercury switches. Although a site-specific plan approved under paragraph (b)(1) of this section may require only the removal of convenience light switch mechanisms, the Administrator will credit all documented and verifiable mercury-containing components removed from motor vehicle scrap (such as sensors in anti-locking brake systems, security systems, active ride control, and other applications) when evaluating progress towards the 80 percent goal.

(v) For each scrap provider, you must submit semiannual progress reports to the Administrator that provide the number of mercury switches removed or the weight of mercury recovered from the switches, the estimated number of vehicles processed, an estimate of the percent of mercury switches removed, and certification that the removed mercury switches were recycled at RCRA-permitted facilities or otherwise properly managed pursuant to RCRA subtitle C regulations referenced in paragraph (b)(1)(A) of this section. The Administrator may change the approval status of a site-specific plan following 90-days notice based on the progress reports or other information.

(2) *Option for approved mercury programs.* You must certify in your notification of compliance status that you participate in and purchase motor vehicle scrap only from scrap providers who participate in a program for removal of mercury switches that has been approved by the Administrator based on the criteria in paragraphs (b)(2)(i) through (iii) of this section. The National Vehicle Mercury Switch Recovery Program is an EPA-approved program under paragraph (b)(2) of this section unless and until the Administrator disapproves the program (in part or in whole) under paragraph (b)(2)(iii) of this section.

(i) The program includes outreach that informs the dismantlers of the need for removal of mercury switches and provides training and guidance for removing mercury switches;

(ii) The program has a goal for each scrap provider which is a party to the agreement to remove at least 80 percent of mercury switches from the motor vehicle scrap the scrap provider processes. Although a program approved under paragraph (b)(2) of this section may require only the removal of convenience light switch mechanisms, the Administrator will credit all documented and verifiable mercury-containing components removed from motor vehicle scrap (such as sensors in anti-locking brake systems, security systems, active ride control, and other applications) when evaluating progress towards the 80 percent goal; and

(iii) The program sponsor agrees to submit progress reports to the Administrator no less frequently than once every year that provide the number of mercury switches removed or the weight of mercury recovered from the switches, the estimated number of vehicles processed, an estimate of the percent of mercury switches recovered, and certification that the recovered mercury switches were recycled at facilities with permits as required under the rules implementing subtitle C of RCRA (40 CFR parts 261 through 265 and 268). The progress reports must be based on a database that includes data for each program participant; however, data may be aggregated at the State level for progress reports that will be publicly available. The Administrator may change the approval status of a program or portion of a program (*e.g.*, at the State level) following 90-days notice based on the progress reports or on other information.

(3) *Option for specialty metal scrap.* You must certify in your notification of compliance status that the only materials from motor vehicles in the scrap are materials recovered for their specialty alloy (including, but not limited to, chromium, nickel, molybdenum, or other alloys) content (such as certain exhaust systems) and, based on the nature of the scrap and purchase specifications, that the type of scrap is not reasonably expected to contain mercury switches.

(c) *Recordkeeping and reporting requirements.* (1) In addition to the records required by § 63.10, you must keep records to demonstrate compliance with the requirements for your pollution prevention plan in paragraph (a)(1) of this section and/or for the use of only restricted scrap in paragraph (a)(2) of this section and for mercury in paragraph (b)(1) of this section, including any compliance options in paragraphs (b)(2) and (3) of this section.

(1) If you are subject to the requirements for a site-specific plan for mercury under paragraph (b)(1) of this section, you must:

(i) Maintain records of the number of mercury switches removed or the weight of mercury recovered from the switches and properly managed, the estimated number of vehicles processed, and an estimate of the percent of mercury switches recovered; and

(ii) Submit semiannual reports of the number of mercury switches removed or the weight of mercury recovered from the switches and properly managed, the estimated number of vehicles processed, an estimate of the percent of mercury switches recovered, and certification that the recovered mercury switches were recycled at RCRA-permitted facilities. The semiannual reports must include a certification that you have conducted inspections, site visits, or taken other means of corroboration as required under paragraph (b)(1)(ii)(C) of this section. You may include this information in the semiannual compliance reports required under paragraph (c)(3) of this section.

(2) If you are subject to the option for approved mercury programs under paragraph (b)(2) of this section, you must maintain records identifying each scrap provider and documenting the scrap provider's participation in an approved mercury switch removal program.

(3) You must submit semiannual compliance reports to the Administrator for the control of contaminants from scrap according to the requirements in § 63.10(e). The report must clearly identify any deviation from the requirements in paragraphs (a) and (b) of this section and the corrective action taken. You must identify which compliance option in paragraph (b) of this section applies to each scrap provider, contract, or shipment.

§ 63.10686 What are the requirements for electric arc furnaces and ladle metallurgy operations?

(a) You must install, operate, and maintain a capture system that collects the gases and fumes from each EAF (including charging, melting, and tapping operations) and ladle metallurgy operation and conveys the collected gas stream to a control device for the removal of particulate matter (PM).

(b) Except as provided in paragraph (c) of this section, you must not discharge or cause the discharge into the atmosphere from an EAF or ladle metallurgy operation any gases which:

(1) Exit from a control device and contain in excess of 0.0052 grains of PM per dry standard cubic foot (gr/dscf); and

(2) Exit from a melt shop and, due solely to the operations of any affected EAF(s) or ladle metallurgy operation(s), exhibit 6 percent opacity or greater.

(c) If you own or operate a new or existing affected source that produces less than 150,000 tons per year (tpy) of stainless or specialty steel, you must not discharge or cause the discharge into the atmosphere from an EAF or ladle metallurgy operation any gases which:

(1) Exit from a control device and contain in excess of 0.8 pounds of PM per ton (lb/ton) of steel; and

(2) Exit from a melt shop and, due solely to the operations of any affected EAF(s) or ladle metallurgy operation(s), exhibit 6 percent opacity or greater.

(d) Except as provided in paragraph (d)(6) of this section, you must conduct performance tests to demonstrate initial compliance with the applicable emissions limit for each emissions source subject to an emissions limit in paragraph (b) or (c) of this section.

(1) You must conduct each PM performance test for an EAF or ladle metallurgy operation according to the procedures in § 63.7 and 40 CFR 60.275a using the following test methods in 40 CFR part 60, appendices A–1, A–2, A–3, and A–4:

(i) Method 1 or 1A of Appendix A–1 of 40 CFR part 60 to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G of Appendix A–1 of 40 CFR part 60 to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B of Appendix A–2 of 40 CFR part 60 to determine the dry molecular weight of the stack gas. You may use ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses (incorporated by reference—see § 63.14) as an alternative to EPA Method 3B.

(iv) Method 4 of Appendix A–3 of 40 CFR part 60 to determine the moisture content of the stack gas.

(v) Method 5 or 5D of Appendix A–3 of 40 CFR part 60 to determine the PM concentration. Three valid test runs are needed to comprise a PM performance test. For EAF, sample only when metal is being melted and refined. For ladle metallurgy operations, sample only when the operation(s) are being conducted.

(2) You must conduct each opacity test for a melt shop according to the procedures in § 63.6(h) and Method 9 of Appendix A–4 of 40 CFR part 60. When emissions from any EAF or ladle metallurgy operation are combined with emissions from emission sources not subject to this subpart, you must demonstrate compliance with the melt shop opacity limit based on emissions from only the emission sources subject to this subpart.

(3) During any performance test, you must monitor and record the information specified in 40 CFR 60.274a(h) for all heats covered by the test.

(4) You must notify, and receive approval from the Administrator for procedures that will be used to determine compliance for an EAF or ladle metallurgy operation when emissions are combined with those from facilities not subject to this subpart.

(5) To determine compliance with the PM emissions limit in paragraph (c) of this section for an EAF or ladle metallurgy operation in a lb/ton of steel format, compute the process-weighted mass emissions (E_p) for each test run using Equation 1 of this section:

$$E_p = \frac{C \times Q \times T}{P \times K} \qquad \text{(Eq. 1)}$$

Where:

E_p = Process-weighted mass emissions of PM, lb/ton;

C = Concentration of PM or total metal HAP, gr/dscf;

Q = Volumetric flow rate of stack gas, dscf/hr;

T = Total time during a test run that a sample is withdrawn from the stack during steel production cycle, hr;

P = Total amount of metal produced during the test run, tons; and

K = Conversion factor, 7,000 grains per pound.

(6) If you own or operate an existing affected source that is subject to the emissions limits in paragraph (b) or (c) of this section, you may certify initial compliance for one or more emissions sources based on the results of a previous performance test for that emissions source in lieu of the requirement for an initial performance test provided that the test(s) were conducted within 5 years of the compliance date using the methods and procedures specified in paragraph (d)(1) or (2) of this section; the test(s) were for the affected facility; and the test(s) were representative of current or anticipated operating processes and conditions. Should the permitting authority deem the prior test data unacceptable, the owner or operator must conduct an initial performance test within 180 days of the rule compliance date.

(e) You must monitor the capture system and PM control device required by this subpart, maintain records, and submit reports according to the compliance assurance monitoring requirements in 40 CFR part 64. The exemption in 40 CFR 64.2(b)(1)(i) for emissions limitations or standards proposed after November 15, 1990 under section 111 or 112 of the CAA does not apply. In lieu of the deadlines for submittal in 40 CFR 64.5, you must submit the monitoring information required by 40 CFR 64.4 to the applicable permitting authority for approval by no later than the compliance date for your affected source for this subpart and operate according to the approved plan by no later than 180 days after the date of approval by the permitting authority.

Other Requirements and Information

§ 63.10690 What parts of the General Provisions apply to this subpart?

(a) You must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as provided in Table 1 of this subpart.

(b) The notification of compliance status required by § 63.9(h) must include each applicable certification of compliance, signed by a responsible official, in paragraphs (b)(1) through (6) of this section.

(1) For the pollution prevention plan requirements in § 63.10685(a)(1): ''This facility has submitted a pollution prevention plan for metallic scrap selection and inspection in accordance with § 63.10685(a)(1)'';

(2) For the restrictions on metallic scrap in § 63.10685(a)(2): ''This facility complies with the requirements for restricted metallic scrap in accordance with § 63.10685(a)(2)'';

(3) For the mercury requirements in § 63.10685(b):

(i) ''This facility has prepared a site-specific plan for mercury switches in accordance with § 63.10685(b)(1)'';

(ii) ''This facility participates in and purchases motor vehicle scrap only from scrap providers who participate in a program for removal of mercury switches that has been approved the EPA Administrator in accordance with § 63.10685(b)(2)''; or

(iii) ''The only materials from motor vehicles in the scrap charged to an electric arc furnace at this facility are materials recovered for their specialty alloy content in accordance with § 63.10685(b)(3) which are not reasonably expected to contain mercury switches''.

(4) This certification of compliance for the capture system requirements in § 63.10686(a), signed by a responsible official: ''This facility operates a capture system for each electric arc furnace and ladle metallurgy operation that conveys the collected gas stream to a PM control device in accordance with § 63.10686(a)''.

(5) If applicable, this certification of compliance for the performance test requirements in § 63.10686(d)(6): ''This facility certifies initial compliance with the applicable emissions limit in § 63.10686(a) or (b) based on the results of a previous performance test in accordance with § 63.10686(d)(6)''.

(6) This certification of compliance for the monitoring requirements in § 63.10686(e), signed by a responsible

official: ''This facility has developed and submitted proposed monitoring information in accordance with 40 CFR part 64''.

§ 63.10691 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the EPA or a delegated authority such as a State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that Agency has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (3) of this section.

(1) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in 40 CFR 63.90.

(2) Approval of major change to monitoring under 40 CFR 63.8(f). A ''major change to monitoring'' is defined in 40 CFR 63.90.

(3) Approval of a major change to recordkeeping/reporting under 40 CFR 63.10(f). A ''major change to recordkeeping/reporting'' is defined in 40 CFR 63.90.

§ 63.10692 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Capture system means the equipment (including ducts, hoods, fans, dampers, etc.) used to capture or transport particulate matter generated by an electric arc furnace or ladle metallurgy operation to the air pollution control device.

Chlorinated plastics means solid polymeric materials that contain chlorine in the polymer chain, such as polyvinyl chloride (PVC) and PVC copolymers.

Control device means the air pollution control equipment used to remove particulate matter from the effluent gas stream generated by an electric arc furnace or ladle metallurgy operation(s).

Deviation means any instance where an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emissions limitation or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Electric arc furnace (EAF) means a furnace that produces molten steel and heats the charge materials with electric arcs from carbon electrodes. An electric arc furnace consists of the furnace shell, roof, and the transformer.

Electric arc furnace (EAF) steelmaking facility means a steel plant that produces carbon, alloy, or specialty steels using an EAF. This definition excludes EAF steelmaking facilities at steel foundries.

Free organic liquids means material that fails the paint filter test by EPA Method 9095B (incorporated by reference—see 40 CFR 63.14) after accounting for water using a moisture determination test by ASTM Method D2216–05 or subsequent versions (incorporated by reference-see 40 CFR 63.14). If, after conducting a moisture determination test, any portion of the material passes through and drops from the filter within the 5-minute test period, the material contains *free organic liquids*.

Ladle metallurgy means a steelmaking process that is performed typically in a ladle after initial refining in an electric arc furnace, including argon-oxygen decarburization, alloy addition, temperature adjustment, and other processes that adjust or amend the chemical and/or mechanical properties of steel. This definition does not include vacuum degassing.

Leaded steel means steel that must meet a minimum specification for lead content (typically 0.25 percent or more) and for which lead is a necessary alloy for that grade of steel.

Mercury switch means each mercury-containing capsule or switch assembly that is part of a convenience light switch mechanism installed in a vehicle.

Motor vehicle means an automotive vehicle not operated on rails and usually is operated with rubber tires for use on highways.

Motor vehicle scrap means vehicle or automobile bodies, including automobile body hulks, that have been processed through a shredder. *Motor vehicle scrap* does not include automobile manufacturing bundles, or miscellaneous vehicle parts, such as wheels, bumpers or other components that do not contain mercury switches.

Scrap provider means the person (including a broker) who contracts directly with a steel mill to provide motor vehicle scrap. Scrap processors such as shredder operators or vehicle dismantlers that do not sell scrap directly to a steel mill are not *scrap providers*.

Specialty steel means low carbon and high alloy steel other than stainless steel that is processed in an argon-oxygen decarburization vessel.

Stainless steel means low carbon steel that contains at least 10.5 percent chromium.

As required in § 63.10691(a), you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

TABLE 1 TO SUBPART YYYYY OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART YYYYY

Citation	Subject	Applies to Subpart YYYYY?	Explanation
§ 63.1(a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(10)–(a)(12), (b)(1), (b)(3), (c)(1), (c)(2), (c)(5), (e).	Applicability	Yes.	
§ 63.1(a)(5), (a)(7)–(a)(9), (b)(2), (c)(3), (c)(4), (d).	Reserved	No.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities and Circumvention	Yes.	

TABLE 1 TO SUBPART YYYYY OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART YYYYY—Continued

Citation	Subject	Applies to Subpart YYYYY?	Explanation
§ 63.5	Preconstruction Review and Notification Requirements.	Yes.	
§ 63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1), (e)(3)(i), (e)(3)(iii)–(e)(3)(ix), (f), (g), (h)(1), (h)(2), (h)(5)–(h)(9), (i), (j).	Compliance with Standards and Maintenance Requirements.	Yes.	
§ 63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv).	Reserved	No.	
§ 63.7	Applicability and Performance Test Dates.	Yes.	
§ 63.8(a)(1), (a)(2), (b), (c), (d),(e), (f)(1)–(5), (g).	Monitoring Requirements	Yes	Requirements in § 63.8(c)(4)(i)–(ii), (c)(5) and (c)(6), (d), (e), and (g) apply if a COMS or CEMS is used.
§ 63.8(a)(3)	[Reserved]	No.	
§ 63.8(a)(4)	Additional Monitoring Requirements for Control Devices in § 63.11.	No.	
§ 63.8(c)(4)	Continuous Monitoring System Requirements.	Yes	Requirements apply if a COMS or CEMS is used.
§ 63.8(f)(6)	RATA Alternative	Yes	Requirements apply if a CEMS is used.
§ 63.9(a), (b)(1), (b)(2), (b)(5), (c), (d), (f), (g), (h)(1)–(h)(3), (h)(5), (h)(6), (i), (j).	Notification Requirements	Yes.	
§ 63.9(b)(3), (h)(4)	Reserved	No.	
§ 63.9(b)(4)		No.	
§ 63.10(a), (b)(1), (b)(2)(i)–(v), (b)(2)(xiv), (b)(3), (c)(1), (c)(5)–(c)(8), (c)(10)–(c)(15), (d), (e)(1)–(e)(4), (e)(4), (f).	Recordkeeping and Reporting Requirements.	Yes	Additional records for CMS in § 63.10(c)(1)–(6), (9)–(15), and reports in § 63.10(d)(1)–(2) apply if a COMS or CEMS is used.
§ 63.10(b)(2)(xiii)	CMS Records for RATA Alternative	Yes	Requirements apply if a CEMS is used.
§ 63.10(c)(2)–(c)(4), (c)(9)	Reserved	No.	
§ 63.11	Control Device Requirements	No.	
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13–63.16	Addresses, Incorporations by Reference, Availability of Information, Performance Track Provisions.	Yes.	

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Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Area Sources: Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary Nonferrous Metals Processing; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2006–0424; EPA–HQ–OAR–2006–0360; EPA–HQ–OAR–2006–0940; FRL–8469–9]

RIN 2060–AM12

National Emission Standards for Hazardous Air Pollutants for Area Sources: Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary Nonferrous Metals Processing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing national emission standards for the Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary Nonferrous Metals Processing area source categories. The proposed emissions standards for new and existing sources are based on EPA's proposed determination as to what constitutes the generally available control technology or management practices for each area source category.

DATES: Comments must be received on or before October 22, 2007 unless a public hearing is requested by October 1, 2007. If a hearing is requested on the proposed rules, written comments must be received by November 5, 2007. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before October 22, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0424 (for Clay Ceramics Manufacturing), Docket ID No. EPA–HQ–OAR–2006–0360 (for Glass Manufacturing), or Docket ID No. EPA–HQ–OAR–2006–0940 (for Secondary Nonferrous Metals Processing) by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* National Emission Standards for Hazardous Air Pollutants for Area Sources: Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary. Nonferrous Metals Processing, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0424 (for Clay Ceramics Manufacturing), Docket ID No. EPA–HQ–OAR–2006–0360 (for Glass Manufacturing), or Docket ID No. EPA–HQ–OAR–2006–0940 (for Secondary Nonferrous Metals Processing). EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: For questions about the proposed rule for Clay Ceramics Manufacturing, contact Mr. Bill Neuffer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Metals and Minerals Group (D243–02), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–5435; fax number: (919) 541–3207; e-mail address: *Neuffer.Bill@epa.gov.* For questions about the proposed rule for Glass Manufacturing or Secondary Nonferrous Metals Processing, contact Ms. Susan Fairchild, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Metals and Minerals Group (D243–02), Research Triangle Park, NC 27711, telephone number: (919) 541–5167, fax number: (919) 541–3207, e-mail address: *Fairchild.Susan@epa.gov.*

SUPPLEMENTARY INFORMATION: The supplementary information presented in this preamble is organized as follows:

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I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by the proposed standards include:

Category	NAICS code [1]	Examples of regulated entities
Industry:		
Clay Ceramics Manufacturing	327122 327111 327112	Area source facilities that manufacture ceramic wall and floor tile, vitreous plumbing fixtures, vitreous china tableware and kitchenware, and/or pottery.
Glass Manufacturing	327211 327212 327213	Area source facilities that manufacture flat glass, glass containers, and other pressed and blown glass and glassware.
Secondary Nonferrous Metals Processing.	331492 331423	Area source brass and bronze ingot making, secondary magnesium processing, or secondary zinc processing plant that melts post-consumer nonferrous metal scrap to make products including bars, ingots, and blocks, or metal powders.[2]

[1] North American Industry Classification System.
[2] The Secondary Nonferrous Metals Processing area source category was originally established under SIC code 3341, a broader classification which included brass and bronze ingot makers. The corresponding NAICS code for brass and bronze ingot makers is 331423.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 63.11435 of subpart RRRRRR (national emissions standards for hazardous air pollutants (NESHAP) for Clay Ceramics Manufacturing Area Sources), 40 CFR 63.11448 of subpart SSSSSS (NESHAP for Glass Manufacturing Area Sources), and 40 CFR 63.11462 of subpart TTTTTT (NESHAP for Secondary Nonferrous Metals Processing). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA Regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. What should I consider as I prepare my comments to EPA?

Do not submit CBI to EPA through *www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2006–0424 (for Clay Ceramics Manufacturing), or Docket ID EPA–HQ–OAR–2006–0360 (for Glass Manufacturing), or Docket ID EPA–HQ–OAR–2006–0940 (for Secondary Nonferrous Metals Processing). Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed action will also be available on the WorldWide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of the proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

D. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing concerning the proposed rules by October 1, 2007, we will hold a public hearing on October 5, 2007. If you are interested in attending the public hearing, contact Ms. Pamela Garrett at (919) 541–7966 to verify that a hearing will be held.

II. Background Information for Proposed Area Source Standards

A. What is the statutory authority for the proposed NESHAP?

Section 112(k)(3)(B) of the Clean Air Act (CAA) requires EPA to identify at least 30 hazardous air pollutants (HAP) which, as the result of emissions from area sources,[1] pose the greatest threat to public health in urban areas. Consistent with this provision, in 1999, in the Integrated Urban Air Toxics Strategy, EPA identified the 30 HAP that pose the greatest potential health threat in urban

[1] An area source is a stationary source of HAP emissions that is not a major source. A major source is a stationary source that emits or has the potential to emit 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

areas, and these HAP are referred to as the ''urban HAP.'' See 64 FR 38706, 38715–716, July 19, 1999. Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. EPA listed the source categories that account for 90 percent of the urban HAP emissions in the Integrated Urban Air Toxics Strategy.[2] Sierra Club sued EPA, alleging a failure to complete standards for the source categories listed pursuant to CAA section 112(c)(3) and 112(k)(3)(B) within the timeframe specified by the statute. See *Sierra Club* v. *Johnson*, No. 01–1537, (D.D.C.). On March 31, 2006, the court issued an order requiring EPA to promulgate standards under CAA section 112(d) for those area source categories listed pursuant to CAA section 112(c)(3) and 112(k)(3)(B).

Among other things, the order requires that, by December 15, 2007, EPA complete standards for 10 area source categories. As part of our effort to meet the December 15, 2007 deadline, we are proposing in this action the NESHAP for the following three listed area source categories: (1) Clay Ceramics Manufacturing; (2) Glass Manufacturing; and (3) Secondary Nonferrous Metals Processing. The standards for the other categories are being proposed in separate actions.

We added Glass Manufacturing and Secondary Nonferrous Metals Processing to the Integrated Urban Air Toxics Strategy area source category list on June 26, 2002 (67 FR 43112). The Glass Manufacturing area source category is comprised of three distinct industry sectors: (1) Flat Glass Manufacturing; (2) Container Glass Manufacturing; and (3) Pressed and Blown Glass Manufacturing. On November 22, 2002, we added Clay Products Manufacturing to the area source category list (67 FR 70428). The Clay Products Manufacturing area source category was later split into the two categories of Brick and Structural Clay Products (BSCP) Manufacturing and Clay Ceramics Manufacturing to better match the categories already scheduled to be regulated by major source NESHAP. The Clay Ceramics Manufacturing area source category is being addressed in this proposed rule, while the BSCP Manufacturing area source category will be addressed in a future action. (For more information on the area source categories, see *http://www.epa.gov/ttn/atw/area/arearules.html*.)

The inclusion of the Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary Nonferrous Metals Processing area source categories on the section 112(c)(3) area source category list is based on 1990 emissions data, as EPA used 1990 as the baseline year for that listing. Specifically, the Clay Products Manufacturing area source category was listed based on emissions of compounds of chromium, lead, manganese, and nickel that represent part of the 90 percent of those urban HAP emissions in the 1990 inventory and are hereafter referred to as ''clay ceramics metal HAP.'' The Glass Manufacturing area source category was listed based on emissions of compounds of arsenic, cadmium, chromium, lead, manganese, and nickel that represent part of the 90 percent of those urban HAP emissions in the 1990 inventory and are hereafter referred to as ''glass manufacturing metal HAP.'' The Secondary Nonferrous Metals Processing area source category was listed based on emissions of compounds of arsenic, chromium, lead, manganese, and nickel that represent part of the 90 percent of those urban HAP emissions in the 1990 inventory and are hereafter referred to as ''secondary nonferrous metal HAP.''

B. What criteria did EPA use in developing the proposed NESHAP?

Under CAA section 112(d)(5), the Administrator may, in lieu of standards requiring maximum achievable control technology (MACT) under section 112(d)(2), elect to promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.'' Under section 112(d)(5), the Administrator has the discretion to use generally available control technology or management practices (GACT) in lieu of MACT. Pursuant to section 112(d)(5), we have decided not to issue MACT standards and concluded that GACT is appropriate for these three source categories.

Additional information on the definition of GACT is found in the Senate report on the legislation (Senate Report Number 101–228, December 20, 1989), which indicates GACT means:

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, in addition to considering technical capabilities of the facilities and the availability of control measures, we may consider costs and economic impacts in determining GACT, which is particularly important when developing regulations for source categories that may have few establishments and many small businesses.

Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted above, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

III. Proposed Area Source NESHAP for Clay Ceramics Manufacturing

A. What area source category is affected by the proposed rule?

The Clay Ceramics Manufacturing area source category includes those facilities that process greater than 45 megagrams per year (Mg/yr) (50 tons per year (tpy)) wet clay to manufacture pressed floor tile, pressed wall tile, and other pressed tile; sanitaryware (toilets and sinks); dinnerware; or pottery. Clay ceramics are primarily composed of clay and shale, and may include many different additives, including silica, talc, and various high purity powders produced by chemical synthesis.

To estimate the number of facilities in the Clay Ceramics Manufacturing area source category, we gathered detailed information from the NESHAP for Clay Ceramics Manufacturing major sources. Also, we compiled information from other sources, including site visits, Internet searches, and industry submittals. Based on this information and taking into account recent facility shutdowns, we have identified 51 area source facilities with spray glaze operations or kilns that fire glazed ceramic ware that would be subject to the final clay ceramics manufacturing area source NESHAP.

[2] Since its publication in the Integrated Urban Air Toxics Strategy in 1999, the area source category list has undergone several amendments.

With this action, we are also clarifying that artisan potters, small ceramics studios, noncommercial entities, and schools and universities with ceramic arts programs, which typically have annual production rates of 45 Mg/yr (50 tpy) or less, are not a part of the source category listed pursuant to section 112(c)(3) and (k)(3)(B), and are, therefore, not covered by this area source standard. Urban HAP emissions from these facilities were not included in the 1990 baseline emissions inventory that was used as the basis for the area source category listing. Specifically, in reviewing the inventory on which we based the listing of this source category, we determined that the sources that were the basis of the listing decision were those with an annual production rate in excess of 45 Mg/yr (50 tpy).

B. What are the production processes and emissions points at facilities that manufacture clay ceramics?

Clay ceramics manufacturing generally includes raw material processing and handling and forming of the clay product shapes, followed by drying, glazing, and firing. Some tile products and most dinnerware/pottery are fired in a kiln prior to some type of glazing operation. More than 95 percent of all clay ceramic products are coated with a glaze and then fired in a kiln.

Spray glaze operations and kilns that fire glazed ceramic ware account for most of the particulate matter (PM) and urban metal HAP emitted from clay ceramics manufacturing facilities (about 80 to 90 percent from spray glaze operations and 10 to 20 percent from kilns). Overspray accounts for most of the PM and clay ceramics metal HAP emitted during spray glaze operations. Emissions from kilns firing glazed ceramic ware consist primarily of volatilized materials from the glaze. The type and volume of HAP emissions vary according to the glaze materials. Emissions of PM from spray glaze operations and kilns firing glazed ceramic ware are estimated at about 407 Mg/yr (449 tpy) nationwide, with about 7.1 Mg/yr (7.9 tpy) of clay ceramics metal HAP (mostly lead and chromium, with smaller quantities of nickel and manganese). Lead emissions are estimated at about 4.1 Mg/yr (4.5 tpy), and most of those emissions come from the two dinnerware facilities still using leaded glazes. Since 1990, most clay ceramics facilities have ceased using leaded glazes because of potential environmental and worker exposure issues.

Spray glazing operations at area source facilities are currently controlled in terms of clay ceramics metal HAP emissions as a result of state and local air pollution standards, permit requirements, and/or management practices already implemented by the industry to reduce clay ceramics metal HAP from spray glaze operations. Capture systems for spray glaze operations typically include spray booths; partial or total enclosures; and process area ventilation systems. Several different types of air pollution control devices (APCD) are used to control overspray emissions from glaze spray booths, including wet scrubbers, fabric filters, water curtains, and water-wash systems.

Most, if not all, facilities practice waste minimization in their glazing operations to minimize glaze cost and cleanup downtime. Examples of waste minimization practices include, but are not limited to, minimizing glaze overspray emissions using high-volume, low pressure (HVLP) spray equipment or similar spray equipment; minimizing HAP emissions during cleanup of spray glazing equipment; operating and maintaining spray glazing equipment according to manufacturer's instructions; and minimizing spills through careful handling of HAP-containing glaze materials. HVLP spray equipment operates at low atomizing air pressure—0.69 to 69 kilopascals (0.1 to 10 pounds per square inch) at the air nozzle and use 0.42 to 0.85 cubic meters per minute (15 to 30 cubic feet per minute) of air.

No APCD are used by area sources in the clay ceramics manufacturing industry to control emissions from kilns. However, available operating permit information shows that most, if not all, clay ceramics kilns firing glazed ceramic ware are fired with natural gas or some other clean-burning, low-HAP fuel (e.g., propane). Some clay ceramics manufacturing facilities use electric-powered kilns. Furthermore, clay ceramics manufacturing facilities maintain the peak firing temperatures of their kilns firing glazed ceramic ware well below the volatilization temperatures of the clay ceramics metal HAP in their spray glazes.

1. Selection of Affected Source

Affected source means the collection of equipment and processes in the source category or subcategory to which the subpart applies. In selecting the affected source for regulation, we identified the clay ceramics metal HAP-emitting operations, the clay ceramics metal HAP emitted, and the quantity of clay ceramics metal HAP emissions from the individual or groups of emissions points. We concluded that designating the group of atomized spray glaze operations and kilns firing glazed ceramic ware within the clay ceramics manufacturing operation as the affected source was the most appropriate approach and consistent with the basis for the original listing. This proposed rule includes requirements for the control of emissions from all atomized spray glaze operations and all curing operations involving kilns firing glazed ceramic ware.

2. Selection of Pollutants

For this proposed rule, we decided that it was not practical to establish individual standards for each specific type of clay ceramics metal HAP that could be present in the various processes. A sufficient correlation exists between PM and these clay ceramics metal HAP to rely on PM as a surrogate for both the presence of the HAP and for their control.[3] When released, each of the clay ceramics metal HAP compounds behaves as PM. The control technologies used for the control of PM emissions achieve comparable levels of performance on the individual clay ceramics metal HAP emissions. Therefore, standards requiring good control of PM also achieve good control of clay ceramics metal HAP emissions. Furthermore, establishing separate standards for each individual metal HAP would impose costly and significantly more complex compliance and monitoring requirements and achieve little, if any, HAP emissions reductions beyond what would be achieved using the surrogate pollutant approach based on total PM. Based on these considerations, we decided to establish standards for Clay Ceramics Manufacturing based on control of total PM as a surrogate pollutant for the individual clay ceramics metal HAP.

C. How did EPA subcategorize spray glaze operations?

As part of the GACT analysis, we considered whether there were differences in processes, sizes, or other factors affecting emissions that would warrant subcategorization. Under section 112(d)(1) of the CAA, EPA ''may distinguish among classes, types, and sizes within a source category or subcategory in establishing such standards* * *''. In our review of the available data, we observed significant differences between spray glaze operations based on the level of wet glaze usage and clay ceramics metal HAP emissions. For these reasons, we

[3] *National Lime Association* v. *EPA*. 233 F.3d 625, 639–640 (D.C. Cir. 2000) and *Sierra Club* v. *EPA*, 353 F.3d 976 (D.C. Cir. 2004).

are proposing two subcategories for spray glaze operations based on annual wet glaze usage: those facilities with annual wet glaze usage of more than 227 Mg/yr (250 tpy) and facilities with annual wet glaze usage of 227 Mg/yr (250 tpy) or less. These subcategories differentiate between general sizes of glazing operations at clay ceramics manufacturing facilities, but do not differentiate clay product types or other processes.

Those facilities with wet glaze usage above the threshold level would be subject to a different set of management practices than those facilities at or below the threshold level, which are more likely to be small businesses and comprise a much smaller fraction of total production, glaze usage, and clay ceramics metal HAP emissions. Our analysis indicates that approximately 88 percent of wet glaze usage and 75 percent of clay ceramics metal HAP emissions are associated with 11 clay ceramic manufacturing area source facilities in the subcategory with wet glaze usage levels greater than 227 Mg/yr (250 tpy) and the other 12 percent of wet glaze usage and 25 percent of clay ceramics metal HAP emissions come from 40 facilities in the subcategory with wet glaze usage at or below 227 Mg/yr (250 tpy). To account for those facilities that use non-HAP glazes in some or all of their processes, we have included a provision allowing sources to exclude glazes that contain less than 0.1 (weight) percent clay ceramics metal HAP in determining their total wet glaze usage relative to the 227 Mg/yr (250 tpy) subcategorization threshold.

D. How was GACT determined?

As provided in CAA section 112(d)(5), we are proposing standards representing GACT for the clay ceramics metal HAP. As noted in section II of this preamble, the statute allows the Agency to establish standards for area sources listed pursuant to section 112(c) based on GACT. The statute does not set any condition precedent for issuing standards under section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to section 112(c), which is the case here.

Moreover, most of the facilities in this source category have good operational controls in-place and use small quantities of clay ceramics metal HAP in their glazes. We evaluated the control technologies and management practices that reduce HAP emissions that are generally available for the clay ceramics manufacturing area source category. We also considered costs and economic impacts in determining GACT. We believe the consideration of costs and economic impacts is especially important for the well-controlled clay ceramics manufacturing area sources because, given current well-controlled levels, requiring additional controls would result in only marginal reductions in emissions at very high costs for modest incremental improvement in control for this area source category. We explain below in detail our proposed GACT determinations.

1. GACT for Kilns

As noted previously, we are not aware of any APCD used by clay ceramics manufacturing area source facilities to control emissions from kilns, but most, if not all, clay ceramics kilns firing glazed ceramic ware are fired with natural gas or some other clean-burning, low-HAP fuel (e.g., propane). Based on the available information for all types and sizes of kilns in this industry, we are not aware of any add-on control techniques being used to reduce PM emissions from kilns. Consequently, we determined GACT for kilns to be using natural gas, or an equivalent fuel, for all firing of glazed ceramic ware. For simplicity, we are proposing GACT for all kilns that fire glazed ceramic ware at a given facility and not differentiating between the subcategories identified in the following sections of this preamble involving glazing operations. There are no differences in control equipment or control levels associated with kilns firing different amounts of glazed ceramic ware; therefore, GACT is the same for all kilns.

As noted previously, clay ceramics manufacturing facilities also maintain the peak firing temperatures of their kilns firing glazed ceramic ware well below the volatilization temperatures of the clay ceramics metal HAP in their spray glazes. For those clay ceramics metal HAP that would be present in the kiln exhaust, the lowest volatilization temperature is approximately 1740°C (3160°F) for lead. Based on available information, the highest peak firing temperature used in the clay ceramics manufacturing industry is approximately 1370°C (2500°F). In order to keep peak firing temperatures well below the volatilization temperatures for the relevant clay ceramics metal HAP, we are conservatively proposing GACT as requiring that facilities maintain the peak firing temperatures of their kilns firing glazed ceramic ware below 1540°C (2800°F).

2. GACT for Glaze Spray Booths at Facilities with Wet Glaze Usage Above 227 Mg/yr (250 tpy)

All of the known area source facilities above the threshold of 227 Mg/yr (250 tpy) with atomized spray glaze operations are controlled for PM emissions (e.g., water-wash system or wet scrubber). Many of the glaze spray systems and associated control equipment are custom-designed and -built, depending on product type/size and glaze application spray rates. We lack empirical data for a majority of the facilities in this subcategory for performance testing or actual emission rates associated with spray glaze booths.

In evaluating GACT options, we found that major source clay ceramics manufacturing facilities also utilize similar PM controls on their spray glazing operations. Based on the existing operating permit requirements for clay ceramics facilities, we found a variety of formats and units, e.g., percent opacity, allowable PM or PM_{10} emission rates (pounds per hour (lbs/hr) or tpy), percent removal efficiency, and outlet concentrations (grains per dry standard cubic foot (gr/dscf)). While these requirements cover a wide range of spray glazing processes and products, we believe that they achieve a similar level of control and are generally available. (See technical memorandum in the docket for more details on spray booth permit requirements and estimated clay ceramics metal HAP emissions). Therefore, we determined GACT for the subcategory for glaze spray booths at facilities with wet glaze usage above 227 Mg/yr (250 tpy) to be an equipment requirement: wet control systems for PM emissions. Per the legislative history, a management practice in the form of an equipment requirement is an appropriate standard under section 112(d)(5).

3. GACT for Glaze Spray Booths at Facilities with Wet Glaze Usage At or Below 227 Mg/yr (250 tpy)

Area source facilities at or below the threshold of 227 Mg/yr (250 tpy) typically practice waste minimization in their glazing operations to minimize glaze cost and cleanup downtime. We evaluated the potential costs and emission reductions for APCD for facilities with lower glaze usage and found the cost effectiveness to be unreasonable, e.g., average cost of approximately $71,000/Mg ($64,000/ton) of PM and $10 million/Mg ($9 million/ton) of metal HAP. Therefore, for the subcategory for glaze spray booths at facilities with wet glaze usage at or below 227 Mg/yr (250 tpy), we

determined GACT for spray glaze operations to be waste minimization practices.

E. What are the proposed requirements for area sources?

1. Applicability and Compliance Dates

The proposed standards would apply to any new or existing affected source at a clay ceramics manufacturing facility that is an area source and uses more than 45 Mg/yr (50 tpy) of clay. The affected source includes all kilns that fire glazed ceramic ware and all atomized spray glaze operations located at such a facility.

The owner or operator of an existing affected source would have to comply with the standards by the date of promulgation of the final rule. The owner or operator of a new affected source would be required to comply with the standards by the date of promulgation of the final rule, or upon startup, whichever is later.

2. Proposed Standards

For each kiln firing glazed ceramic ware, the proposed standards would require the facility owner or operator to maintain the kiln peak temperature below 1540°C (2800°F) and either use natural gas, or an equivalent clean-burning fuel, as the kiln fuel. The facility owner or operator would also have the option of using an electric-powered kiln.

The requirements for atomized spray glaze operations at clay ceramic manufacturing area source facilities differ depending on whether a facility has annual wet glaze usage above or below 227 Mg/yr (250 tpy). Consequently, we are proposing that the facility owner or operator maintain annual wet glaze usage records in order to document whether they are above or below 227 Mg/yr (250 tpy) wet glaze usage.

For each atomized spray glaze operation located at a clay ceramics manufacturing facility that uses more than 227 Mg/yr (250 tpy) of wet glaze(s), the proposed standards would require the facility owner or operator to have an APCD on their glazing operations and operate and maintain the control device according to the equipment manufacturer's specifications. As a pollution prevention alternative to this proposed requirement, we are also providing the option to use glazes containing less than 0.1 (weight) percent clay ceramics metal HAP for those facilities above the threshold, which is expected to provide emissions reductions equivalent or greater than those obtained using PM controls.

For each atomized spray glaze operation located at a clay ceramics manufacturing facility that uses 227 Mg/yr (250 tpy) or less of wet glaze(s), the proposed standards would require the facility owner or operator to employ waste minimization practices in their glazing operations. As an alternative to this proposed requirement, we are also providing the option to comply with the equipment standard or management practices for facilities with glaze usage greater than 227 Mg/yr (250 tpy) the threshold (i.e., PM controls or the use of glazes containing less than 0.1 (weight) percent clay ceramics metal HAP), which is expected to provide emissions reductions equivalent or greater than those obtained using waste minimization practices.

3. Proposed Compliance Requirements

Initial compliance demonstration requirements. The owner or operator would be required to include compliance certifications for the proposed standards in their Notification of Compliance Status. For any wet spray glaze operations controlled with an APCD, an initial inspection of the control equipment must be conducted within 60 days of the compliance date and the results of the inspection included in the Notification of Compliance Status.

Monitoring requirements. For each kiln firing glazed ceramic ware, the proposed standards would require the owner or operator to conduct a check of the kiln peak firing temperature on a daily basis. If the peak firing temperature exceeds 1540 °C (2800 °F), the owner or operator would be required to take corrective action according to the facility's standard operating procedures.

Based on available permit information, there are several clay ceramic manufacturing area source facilities with weekly monitoring requirements associated with APCD used for PM emissions. For all sources that operate one or more APCD for their atomized spray glaze operations, we are proposing daily and weekly visual APCD inspections, daily EPA Method 22 visible emissions (VE) tests, or an EPA-approved alternative monitoring program to ensure that the APCD is kept in a satisfactory state of maintenance and repair and continues to operate effectively.

The owner or operator would be allowed to use existing operating permit documentation to meet the monitoring requirements, provided it includes the necessary monitoring records (e.g., the date, place, and time of the monitoring; the person conducting the monitoring; the monitoring technique or method; the operating conditions during monitoring; and the monitoring results).

Notification and recordkeeping requirements. We are proposing that affected sources submit Initial Notifications and Notifications of Compliance Status under this proposed rule because they are consistent with the part 63 General Provisions and are needed to identify the affected sources subject to the standards and confirm the compliance status of the sources. To ensure that facilities have sufficient time to submit the notifications once the rule was promulgated, we are proposing that facilities submit the notifications 120 days after the promulgation date. (The promulgation date is also the compliance date for this rule.) The submittal date for the notifications is based on the requirement for submitting Initial Notifications specified in the part 63 General Provisions.

We are soliciting information on any control technologies or management practices used to limit emissions of PM or metal HAP from clay ceramics manufacturing area sources and any cost information associated with such control approaches. We also request comment on GACT and the proposed standards.

IV. Proposed Area Source NESHAP for Glass Manufacturing

A. What area source category is affected by the proposed rule?

The glass manufacturing area source category consists of plants that operate one or more glass melting furnaces that produce at least 45 Mg/yr (50 tpy) of glass and are charged with one or more of the glass manufacturing metal HAP.

Pressed and Blown Glass and Glassware Manufacturing was listed as an area source category on June 26, 2002 (67 FR 43112). The inclusion of this source category on the area source category list was based on emissions of the six glass manufacturing metal HAP. These HAP are emitted from glass melting furnaces.

The proposed glass manufacturing rule would apply to manufacturers producing glass by melting a mixture of minerals and other compounds, then cooling the melt in a manner that prevents it from crystallizing. The primary constituent of all glass is silica, but most glass contains several other minerals and substances. Examples include soda ash, potash, limestone, feldspar, potassium nitrate, boric acid, iron oxide, and sodium nitrate. Metal oxides can be included in the glass manufacturing formulation to produce colored or tinted glass. Some examples include iron oxide, chromium oxide,

cobalt oxide, nickel, and selenium. Other compounds, such as lead oxide and arsenic compounds, can be added to enhance or modify the final product. Recycled glass, also known as cullet, is a primary ingredient of many glass formulations.

Glass manufacturing plants can be broadly classified by product type as one of the following: Flat glass, container glass, or pressed and blown glass. Flat glass includes plate glass used for building windows and automobile windshields. Container glass includes soda, beer, and wine bottles, jars, and other glass containers. Pressed and blown glass includes a wide variety of products such as light bulbs, glass tubing, optical glass, glass cooking ware, and industrial glassware.

As noted previously, the glass manufacturing area source category was listed based on emissions of the six glass manufacturing metal HAP. The Section 112(k) inventory included emissions of these metal HAP from glass manufacturing plants that use compounds of one or more of the metal HAP as raw materials that are added to the glass manufacturing formulation to impart specific characteristics to the final glass product. We estimate that there currently are 21 such plants in operation in the U.S., and these 21 plants comprise the glass manufacturing area source category.

B. What are the production processes and emission points at facilities that manufacture glass?

Regardless of the type of glass, the process of manufacturing glass entails batch measuring and mixing raw materials in specified proportions, charging the raw material batch mix into a furnace, where it is melted to form molten glass, forming the molten glass into the desired shapes, and finishing and packaging the final product.

Compounds of the glass manufacturing metal HAP are incorporated into glass manufacturing batch formulations to either color, tint, or impart certain characteristics, such as clarity and brilliance, to the final glass product. Lead oxide is used as a clarifier, former, stabilizer, and for radiation shielding in glass. Arsenic is used as a fining agent to facilitate the removal of bubbles from molten glass. The other four glass manufacturing metal HAP compounds are used primarily to color or tint the glass.

Other metal HAP may also be emitted from glass manufacturing furnaces. These include antimony, selenium, and cobalt. Although the source category was not listed for these other metal HAP, the air pollution controls used to obtain reductions of the glass manufacturing metal HAP also reduce emissions of other metal HAP where they are used in the same process.

1. Selection of Source Category

Although listed originally as ''Pressed and Blown Glass and Glassware Manufacturing,'' the Glass Manufacturing area source category listing was based upon data from all of the three primary sectors of the glass manufacturing industry: Flat glass, container glass, and pressed and blown glass. We are clarifying that the Glass Manufacturing area source category includes any glass manufacturing facility that operates one or more furnaces which produce at least 45 Mg/yr (50 tpy) of glass per furnace and use the glass manufacturing metal HAP compounds as raw materials, regardless of the type of glass product manufactured. This clarification does not change the universe of sources that were the basis of the original listing notice.

2. Selection of Affected Sources

The affected source includes glass manufacturing furnaces that meet two criteria: The furnaces are charged with one or more of the glass manufacturing metal HAP as raw materials, and the furnaces have annual production rates of at least 45 Mg/yr (50 tpy). We selected furnaces as the affected source because glass melting furnaces emit the HAP for which this source category was listed pursuant to sections 112(c)(3) and (k)(3)(B) (i.e., arsenic, cadmium, chromium, lead, manganese, and nickel).

C. How was GACT determined?

While most of the facilities that would be subject to the proposed rule have good operational controls in place to control emissions of glass manufacturing metal HAP, a few facilities would have to install emission controls or change their glass formulation to meet the emission limits in the proposed rule. We considered costs and economic impacts in determining GACT and found that the cost effectiveness of reducing PM–10 using add-on control is excellent for PM as well as for reducing glass manufacturing metal HAP. While we believe the consideration of costs and economic impacts is important for area sources, we found that the emission reductions achieved by the proposed rule were compelling. Our analyses show that the proposed rule would result in substantial reductions in emissions at reasonable costs for this area source category, achieving 28 tons per year reductions in glass manufacturing metal HAP and 415 tons per year reductions in PM. We explain below in detail our proposed GACT determinations.

1. Background

Section 112(d)(5) of the CAA allows us to develop area source standards based on GACT. In identifying GACT for the affected sources in the Glass Manufacturing area source category, we compiled data on existing glass manufacturing plants through a series of site visits, a Section 114 information collection request (ICR), operating permits and permit applications, emission inventory reports, emission test reports, published reports on the industry, and databases such as the Toxic Release Inventory and National Emission Inventory (NEI) databases. Detailed data on approximately 80 glass manufacturing plants were compiled in a database, which we then used for subsequent analyses to determine GACT.

The data compiled on existing glass manufacturing facilities included permit limits for PM emissions for approximately 150 furnaces. When converted to a common format (e.g., pounds per ton (lbs/ton)) the data show a wide range in PM emission limits. To meet the most stringent PM emission limits specified in title V permits, plants typically use electrostatic precipitators (ESPs) or fabric filters.

The data also show that many existing glass furnaces are subject to 40 CFR 60, subpart CC, Standards of Performance for Glass Manufacturing Plants (Glass NSPS). The Glass NSPS establishes emission limits for PM and applies to all glass manufacturing plants constructed or modified since 1980 that produce or have the design capacity to produce at least 4,550 kilograms (kg) (about 5 tons) of glass in one day. Depending on the glass recipe, fuel, and process used, the NSPS limits range from 0.2 to 2.0 lbs of PM/ton of glass produced. To comply with the NSPS, plants typically use ESP, fabric filters, or process modifications. Based on the data compiled, approximately 40 percent of container glass furnaces, 50 percent of flat glass furnaces, and 25 percent of pressed and blown glass furnaces are subject to the NSPS.

2. Selection of PM as a Surrogate for Glass Manufacturing Metal HAP

For glass manufacturing furnaces that are charged with any of the glass manufacturing metal HAP as raw materials, PM emissions contain those glass manufacturing metal HAP, and emissions control equipment that is

designed and operated to control PM emissions also control emissions of the glass manufacturing metal HAP. Furthermore, many glass manufacturing plants have title V operating permits that require PM emissions controls and establish emissions limits for PM. For these reasons, we are proposing to establish standards using PM as a surrogate for the glass manufacturing metal HAP. Controlling PM emissions will control emissions of the glass manufacturing metal HAP since the metals are contained within the PM—they are in the particulate form as opposed to the gaseous form. Particulate matter controls used at existing glass manufacturing plants are the same controls available to control particulate metal HAP such as the six glass manufacturing metal HAP. These controls capture particulate metal HAP non-preferentially along with other PM, thus making PM a reasonable surrogate for the metal HAP. We have used this approach in several other NESHAP in which PM was determined to be a surrogate for the metal HAP in the PM.

3. Selection of Emission Factor Format

The data compiled on existing glass manufacturing facilities included permit limits for PM emissions for approximately 150 furnaces. The permit limits are expressed in a variety of formats (units), such as emission factors or production-based mass emission rates (e.g., lbs emitted per ton of glass produced), emission concentrations (e.g., gr/dscf of exhaust), and emission rates (e.g., lbs/hr). Due to the wide range in furnace sizes, we are proposing to use the emission factor format because this format normalizes emissions as a function of production rate. Furthermore, of the 150 permit limits reviewed, the permits for 55 furnaces specified emission limits in the format of an emission factor. In addition, the Glass NSPS specifies emission limits as emission factors.

4. Selection of GACT for Glass Melting Furnaces

In evaluating GACT for the glass manufacturing area source category, we reviewed the available data for glass melting furnaces that have installed emission controls to reduce emissions of PM and metal HAP. Electrostatic precipitators are by far the most commonly used device for controlling emissions of PM or metal HAP from glass furnaces. Among the furnaces that produce glass using metal HAP compounds as raw materials, approximately 35 percent are controlled with ESPs. This includes all of the controlled furnaces in the flat glass and container glass sectors that are charged with metal HAP. For furnaces in the pressed and blown glass sector that produce glass using metal HAP, approximately 38 percent are controlled with ESPs and 24 percent are controlled with fabric filters.

The available test data on controlled emissions of PM and/or metal HAP from furnaces were reviewed. The resulting data set includes the results from 19 tests of PM emissions on ESP-controlled furnaces. The emission factors developed from the data ranged from 0.032 to 0.25 lb PM/ton of glass produced, and the average emission factor was determined to be 0.11 lb PM/ton of glass produced. In order to establish an emission limit representing the variation in normal process operation and emissions from a well-controlled glass furnace, we utilized a statistical approach by calculating the 99th percentile of the data set. This resulted in a PM emission limit of 0.2 lb/ton.

As an alternative to expressing the identified limit in terms of PM, we evaluated expressing the limit in terms of an equivalent emission limit for metal HAP. In this regard, we reviewed the available data on controlled furnaces that were charged with the glass manufacturing metal HAP as raw materials. The resulting data set included the results from 15 emission tests. The emission factors developed from the data ranged from 0.0001 to 0.023 lb metal HAP/ton and averaged 0.008 lb metal HAP/ton. Applying the same methodology that we used to determine the PM emission limit for GACT, we developed GACT in terms of an equivalent metal HAP emission limit to be 0.02 lb metal HAP/ton of glass produced. We consider the PM emission factor of 0.2 lb/ton of glass produced and the glass manufacturing metal HAP emission factor of 0.02 lb/ton of glass produced to be equivalent measures of GACT for well-controlled glass manufacturing furnaces.

The estimated cost effectiveness for requiring furnaces charged with glass manufacturing metal HAP to meet the 0.2 lb/ton PM emission limit ranges from approximately $2,000 to $6,300 per ton of PM removed. In terms of metal HAP removed, the cost effectiveness of meeting the 0.2 lb/ton PM emission limit depends largely on the amount of metal HAP included in the batch formulation. For example, for furnaces that produce glass containing 30 percent lead, the cost effectiveness would be approximately $6,500 per ton of metal HAP removed. However, some facilities produce glass using metal HAP in very small amounts; some plants also use a glass manufacturing formulation that retains most of the metal HAP in the glass product. In both cases, the cost effectiveness for installing controls to meet the proposed 0.2 lb/ton PM emission limit could exceed several million dollars per ton of metal HAP removed. In such cases, the equivalent metal HAP emission limit of 0.02 lb/ton would allow plants to comply with the proposed rule by using glass formulations with very low metal HAP emissions.

Our GACT determinations reflect the levels of emissions reductions that are being achieved by well-controlled sources, and we have concluded that the proposed rule would achieve significant reductions of metal HAP and PM when applied to this source category. We considered the costs and economic impacts of the proposed emission limits. We also considered whether an emission limit more stringent than the 0.2 lb PM/ton or 0.02 lb metal HAP/ton could be achieved by facilities using the technologies described above. We are proposing that requiring more stringent emission limits would not result in significantly greater emission reductions than what we project the proposed rule would achieve. Requiring additional controls would result in only marginal reductions of emissions at very high costs for modest incremental improvement in control for this area source category.

D. What are the proposed requirements for area sources?

1. Applicability and Compliance Dates

The proposed NESHAP would apply to any glass manufacturing plant that is an area source of HAP emissions and operates one or more furnaces which produce at least 50 tpy of glass per furnace by melting a mixture of raw materials that includes compounds of one or more of the glass manufacturing metal HAP.

Under this proposed rule, the compliance date for existing sources would be 2 years following promulgation of the final rule. However, owners or operators of affected sources could request an extension of an additional one year to comply with the proposed rule, as allowed under section 112(i)(3)(B) of the CAA and under § 63.6(i)(4)(A), if the additional time is needed to install emission controls. The request for an extension of the compliance date would have to be submitted to the permitting agency no later than 12 months prior to the compliance date. In addition, the owner or operator would have to apply for a revision of the facility's title V permit to

incorporate the conditions of the compliance date extension. The compliance date for new or reconstructed sources would be the date of promulgation of the final rule or the startup date for the source, whichever is later. The compliance date for facilities with no affected sources at the time of promulgation and which later change processes or increase production and trigger applicability of the proposed rule, would be 2 years following the date on which the facility made the process changes or increased production and thereby became subject to the proposed NESHAP.

2. Proposed Standards for New, Existing, and Reconstructed Sources

This proposed rule would require new and existing affected furnace to comply with a PM emission limit of 0.2 lb/ton of glass produced or an equivalent metal HAP emission limit of 0.02 lb/ton of glass produced. We selected these emission limits based on GACT for glass manufacturing furnaces, as explained in Section IV.C. of this preamble.

3. Initial Testing Requirements

The proposed rule would require an initial one-time performance test on each affected furnace unless the furnace had been tested during the previous 5 years, and the previous test demonstrated compliance with the emission limits in this proposed rule using the same test methods and procedures specified in this proposed rule. The initial performance test is needed to demonstrate that affected sources meet the emission limits.

To demonstrate compliance with the PM emission limits, the proposed rule would require testing using Methods 5 or 17. Method 5 is a standard method for measuring PM and is the test method specified in the Glass NSPS. Method 17 is a standard alternative method for PM where in-stack testing is appropriate. To meet the metal HAP emission limit, plants would be required to test using Method 29, which is the standard method for measuring any metal HAP.

4. Monitoring Requirements

Under the proposed rule, the owner or operator of an existing affected glass furnace that is controlled with an ESP would be required to monitor the secondary voltage and secondary electrical current to each field of the ESP continuously and record the results at least once every 8 hours. This proposed rule would require the owner or operator of a new or reconstructed affected furnace equipped with an ESP to install and operate one or more continuous parameter monitoring systems to continuously measure and record the secondary voltage and electrical current to each field of the ESP. We selected these parameter monitoring requirements because secondary voltage and secondary electrical current are reliable indicators of ESP performance. Either of these parameters dropping below established levels provides an indication that the electrical power to the ESP field in question has decreased and collection efficiency may have decreased accordingly.

The proposed rule would require owners or operators of an existing affected glass furnace that is controlled with a fabric filter to monitor the fabric filter inlet temperature continuously and record the results at least once every 8 hours. We selected this monitoring requirement because it is important to ensure that the exhaust gas temperature does not exceed the maximum allowable temperature for the filter bags. This proposed rule would require the owner or operator of a new or reconstructed affected furnace that is equipped with a fabric filter to install and operate a bag leak detector. Bag leak detectors provide a reliable and cost-effective indicator of tears and other damage to fabric filter bags.

As an alternative to monitoring ESP secondary voltage and electrical current or fabric filter inlet temperature, owners or operators of affected furnaces equipped with either of these control devices would have the option of requesting alternative monitoring, as allowed under § 63.8(f). The alternative monitoring request would have to include a description of the monitoring device or monitoring method that would be used; instrument location; inspection procedures; quality assurance and quality control measures; the parameters that would be monitored; and the frequency with which the operating parameter values would be measured and recorded. The owner or operator of an affected furnace that is equipped with a control device other than an ESP or fabric filter, or that uses other methods to reduce emissions, would be required to submit a request for alternative monitoring, as described in § 63.8(f).

5. Control Device Inspections

Under this proposed rule, the owner or operator of an affected furnace would be required to conduct initial and periodic inspections of the furnace control device. For fabric filters, the proposed rule would require annual inspections of the ductwork, housing, and fabric filter interior. For ESP, the proposed rule would require annual inspections of the ductwork, hopper, and housing, and inspections of the ESP interior every 2 years.

6. Notification and Recordkeeping Requirements

Under this proposal, owners and operators of all affected glass manufacturing plants that operate at least one furnace that produces at least 45 Mg/yr (50 tpy) of glass using any of the glass manufacturing metal HAP as raw materials would be required to submit an Initial Notification, as required under § 63.9(b). Any facility with an affected source would also have to submit a Notification of Compliance Status, as specified in § 63.9(h).

Owners and operators of glass manufacturing facilities would be required to keep records of all notifications, as well as supporting documentation for the notifications. In addition, they would be required to keep records of performance tests; parameter monitoring data; monitoring system audits and evaluations; operation and maintenance of control devices and monitoring systems; control device inspections; and glass manufacturing batch formulation and production.

We selected the requirement for submitting Initial Notifications and Notifications of Compliance Status under this proposed rule because these requirements are specified in the part 63 General Provisions (subpart A). The specific recordkeeping requirements were selected because they are consistent with the part 63 General Provisions and are needed to document compliance with the requirements of this proposed rule.

V. Proposed Area Source NESHAP for Secondary Nonferrous Metals Processing

A. What area source category is affected by the proposed rule?

Secondary nonferrous metals processing facilities are facilities that use furnaces to melt post-consumer nonferrous metal scrap to make products including bars, ingots, blocks, and metal powders. The Secondary Nonferrous Metals Processing area source category consists of brass and bronze ingot makers, secondary magnesium processors, and secondary zinc processors. This area source category was listed pursuant to the Urban Air Toxics Strategy (67 FR 43112, June 26, 2002) due to the emissions of the urban HAP arsenic, chromium, lead, manganese, and nickel, all of which are metal HAP.

In May 2006, we sent an ICR to 98 secondary nonferrous metal processing facilities identified by TRI, NEI and Internet searches, as well as contact with trade associations. Of the 98 facilities receiving the ICR, the ICR was determined to be applicable to 10 facilities. Therefore there are 10 facilities in this area source category. These facilities include brass and bronze ingot makers, secondary magnesium processors, and secondary zinc processors. Reasons for why the ICR was not applicable to many facilities that received the initial ICR mailing included: (1) The facilities were no longer operating, (2) the facilities were included in another secondary nonferrous category such as secondary lead, secondary aluminum, or secondary copper, (3) the facilities reported no emissions of the urban HAP arsenic, chromium, lead, manganese, or nickel, (4) the facilities processed ferrous material, or (5) the facilities performed no urban HAP-emitting processing operations (e.g., scrap wholesalers).

B. What are the production processes and emissions points at facilities that process secondary nonferrous metals?

Basic production processes at secondary nonferrous metals processing facilities are: (1) Material handling and pretreatment, which may include crushing and screening operations, (2) metal charging and melting, (3) metal pouring and cooling, (4) removal of cooled metal from molds, and (5) finishing.

Brass and bronze ingot makers include facilities where secondary copper scrap (e.g., number 1 copper scrap) is used to supplement copper alloy scrap that is remelted and poured into ingots. Furnaces used in secondary brass and bronze ingot making include natural gas-fired rotary kilns and electric induction furnaces.

Furnaces used in brass and bronze ingot making emit PM containing metals. The PM emissions are totally dependent upon the incoming scrap metal which may contain the following urban HAP: lead and smaller amounts of cadmium, nickel, and manganese. In some brass and bronze ingot making processes, exhaust gases are drawn through a quench chamber to cool the gases prior to entering the baghouses to prevent the gases from damaging or destroying the bag filters.

Furnaces in secondary magnesium processing emit PM which may contain the urban HAP manganese. Furnaces used in secondary magnesium processing include natural gas-fired crucibles and electric induction furnaces. One secondary magnesium processor is currently in operation in the U.S. and that facility is equipped with a baghouse on the furnace exhaust.

Secondary zinc processors also emit PM that may contain lead during crushing and screening operations and melting operations. Furnaces used in secondary zinc processing include natural gas-fired kettle, crucible, and retort furnaces and electric induction furnaces.

Furnace distillation with oxidation produces zinc oxide dust. Distillation involves vaporization of zinc at temperatures from 982 to 1249 °C (1800 to 2280 °F). The zinc vapor discharges directly into an air stream leading to a refractory-lined combustion chamber. Excess air completes the oxidation and cools the zinc oxide dust which is then collected in a fabric filter as the final product. Because the zinc oxide dust is the product, well-performing fabric filters are used to optimize product recovery.

According to the information we received, emissions from furnace operations at the secondary nonferrous metals processing facilities and secondary zinc crushing and screening operations are all currently controlled by fabric filters or baghouses, and the collection efficiency of these fabric filters or baghouses during normal operations all exceed 99 percent.

1. Selection of Affected Source

Affected source means the collection of equipment and processes in the source category or subcategory to which the subpart applies. The affected source may be the same collection of equipment and processes as the source category or it may be a subset of the source category. For each rule, we must decide which individual pieces of equipment and processes warrant standards in the context of the CAA section 112 requirements and the industry operating practices.

We are proposing to designate as the affected source in this proposed area source NESHAP all secondary nonferrous metal HAP-emitting operations at brass and ingot making, secondary magnesium processing, and secondary zinc processing facilities. Specifically, based on data from ICR responses, we are designating as the affected source all crushing or screening operations at secondary zinc processing facilities and furnace melting operations at all secondary nonferrous metal processing facilities. This proposed rule includes requirements for the control of emissions from all crushing or screening operations at secondary zinc processing facilities and furnace melting operations at all secondary nonferrous metal processing facilities.

2. Selection of Pollutants

For this proposed rule, we decided that it was impractical to establish individual standards for each specific secondary nonferrous metal HAP that could be present in the various processes (e.g., separate standards arsenic, chromium, lead, manganese, and nickel). Establishing separate standards for each individual metal HAP would impose costly and significantly more complex compliance and monitoring requirements.

All of the urban HAP emitted by sources in this area source category are metal HAP. When released, each of these secondary nonferrous metal HAP compounds behaves as PM. Accordingly, standards requiring good control of PM (e.g., requiring a baghouse) will also effectively control the secondary nonferrous metal HAP emissions from sources in this area source category. Based on these considerations, we are proposing standards for Secondary Nonferrous Metals Processing based on control of total PM as a surrogate pollutant for the individual secondary nonferrous metal HAP.

A sufficient correlation exists between PM and these secondary nonferrous metal HAP to rely on PM as a surrogate for both the presence of the HAP and for their control. When released, each of the secondary nonferrous metal HAP compounds behaves as PM. The control technologies used for the control of PM emissions achieve comparable levels of performance on the individual secondary nonferrous metal HAP.

Further, as previously mentioned, the amount of secondary nonferrous metal HAP emissions from brass and bronze ingot making, secondary magnesium processing, and secondary zinc processing can vary depending on the HAP content in the incoming scrap metals. Because of the inherent variability and unpredictability of the HAP compositions and amounts in incoming scrap material, it is difficult to establish individual numerical emissions for each secondary nonferrous metal HAP.

C. How was GACT determined?

All of the facilities in this source category have good operational controls in-place and most incoming materials contain small quantities of secondary nonferrous metal HAP. We evaluated the control technologies and management practices that reduce HAP emissions that are generally available for the secondary nonferrous metals

processing area source category. We also considered costs and economic impacts in determining GACT. We believe the consideration of costs and economic impacts is especially important for the well-controlled secondary nonferrous metals processing area sources because, given current well-controlled levels, requiring an additional level of control would result in only marginal reductions in emissions at very high costs for modest incremental improvement in control for this area source category. We explain below in detail our proposed GACT determinations.

1. GACT for Existing Sources

In identifying GACT for existing affected sources in the Secondary Nonferrous Metals Processing area source category, we considered the available data on the 10 existing facilities. In their ICR responses, these facilities reported using baghouses on crushing or screening operations at secondary zinc facilities and on furnace melting operations at all facilities and that such baghouses performed at a PM collection efficiency of at least 99 percent or achieved an outlet concentration of at least 0.050 grams per dry standard cubic meter (0.022 gr/dscf) where collection efficiency was not reported.

We are proposing using a baghouse or fabric filter that achieves a PM control efficiency of at least 99 percent as GACT for existing sources because we determined that this level of control is generally available, is cost effective, and is effective for controlling emissions of PM and secondary nonferrous metal HAP.

2. GACT for New Sources

In identifying GACT for new affected sources in the Secondary Nonferrous Metals Processing area source category, we considered the available data on the 10 existing facilities. The best performing facilities reported that each baghouse used at their facilities performed at a PM collection efficiency of at least 99.5 percent.

We contacted baghouse manufacturers to gather information on design parameters and performance for new baghouse installations in the secondary nonferrous metals processing industry. Furthermore, we also considered the performance of baghouses at similar sources (e.g., melting furnaces used in other industries).

Based on available data on the 10 existing facilities, contact with baghouse manufacturers, and consideration of baghouse performance at similar sources, we are proposing using a baghouse or fabric filter that achieves a PM control efficiency of at least 99.5 percent as GACT for new affected sources.

D. What are the proposed requirements for area sources?

1. Applicability and Compliance Dates

The proposed standards would apply to any new or existing affected source at an area source secondary nonferrous metals processing facility. The affected source includes all crushing or screening operations at a secondary zinc processing facility and all furnace melting operations located at a secondary nonferrous metals processing facility.

The owner or operator of an existing affected source would have to comply with the standards by the date of promulgation of the final rule. The owner or operator of a new affected source would be required to comply with the standards by the date of promulgation of the final rule, or upon initial startup, whichever is later.

2. Proposed Standards

The proposed standards would require the owner or operator of an existing affected source to route the emissions from the affected source through a fabric filter or baghouse that achieves a control efficiency of at least 99.0 percent.

The proposed standards would require the owner or operator of a new affected source to route the emissions from the affected source through a fabric filter or baghouse that achieves a control efficiency of at least 99.5 percent.

3. Proposed Compliance Requirements

Performance test requirements. The owner or operator of any existing or new affected source would be required to conduct a one-time initial performance test on the affected source. Existing affected sources that were tested within the past 5 years of the compliance date would be exempt from this one-time test if the test were conducted using the same procedures specified in the proposed standards and either no process changes had been made since the test, or the owner or operator must demonstrate that the results of the performance test, with or without adjustments, reliably demonstrated compliance despite process changes.

Existing and new affected sources would have to be tested using Methods 5 or 17. Method 5 is a standard method for measuring PM and Method 17 is a standard alternative method for PM where in-stack testing is appropriate.

Initial compliance demonstration requirements. The owner or operator of any existing or new affected source would be required to include initial compliance certifications for the proposed standard in their Notification of Compliance Status.

The owner or operator of each existing and new affected source would be required to conduct an initial inspection of each baghouse. The owner or operator would be required to visually inspect the system ductwork and baghouse unit for leaks and inspect the inside of each baghouse for structural integrity and fabric filter condition. The owner or operator would be required to record the results of the inspection and any maintenance action taken.

For each installed baghouse which has been operated within 60 days of the compliance date, the owner or operator would be required to conduct the initial inspection no later than 60 days after the applicable compliance date. For an installed baghouse which has not been operated within 60 days of the compliance date, the owner or operator would be required to conduct an initial inspection prior to startup of the baghouse.

An initial inspection of the internal components of a baghouse is not required if an inspection has been performed within the past 12 months.

Monitoring requirements. For existing affected sources, the owner or operator would be required to conduct either daily EPA Method 22 VE tests or weekly visual inspections of the baghouse system ductwork for leaks, as well as yearly inspections of the interior of the baghouse to determine its structural integrity and to determine the condition of the fabric filter. These monitoring requirements would ensure that the baghouse is kept in a satisfactory state of maintenance and repair and continues to operate efficiently.

For new affected sources, the owner or operator would be required to operate and maintain a bag leak detection system for each baghouse used to comply with the proposed standards. We decided to require bag leak detection systems because these systems can be incorporated into the design and operation of new sources without retrofitting, as would be the case if they were to be incorporate into existing sources. Bag leak detection systems are typical requirements in our regulations of new sources that are of the size and complexity as secondary nonferrous metals processing facilities.

The proposed standards would require the owner or operator to keep records of the date, place, and time of the monitoring; the person conducting the monitoring; the monitoring

technique or method; the operating conditions during monitoring; and the monitoring results.

Notification and recordkeeping requirements. We are proposing that affected sources submit Initial Notifications and Notifications of Compliance Status because they are needed to identify the affected sources subject to the proposed standards and to confirm the compliance status of the sources. To ensure that facilities have sufficient time to submit the notifications once the rule is promulgated, we are proposing that facilities submit the notifications no later than 120 days after the compliance date for this rule. The submittal date for the notifications is based on the requirement for submitting Initial Notifications specified in the part 63 General Provisions.

We are soliciting information on any control technologies or management practices used to limit emissions of PM or metal HAP from secondary nonferrous metals processing area sources and any cost information associated with such control approaches. We also request comment on GACT and the proposed standards.

VI. Proposed Exemption of Certain Area Source Categories From Title V Permitting Requirements

We are proposing exemptions from title V permitting requirements for affected facilities in the clay ceramics and secondary nonferrous metals processing area source categories for the reasons described below. Glass manufacturers that would be subject to this proposed rule are already subject to title V requirements because they are major sources of PM, NO_X, or both. Therefore, we are not proposing to exempt the glass manufacturing area source category from title V.

Section 502(a) of the CAA provides that the Administrator may exempt an area source category from title V if he determines that compliance with title V requirements is ''impracticable, infeasible, or unnecessarily burdensome'' on an area source category. See CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term ''unnecessarily burdensome'' in CAA section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. See 70 FR 75320, December 19, 2005 (''Exemption Rule'').

The four factors that EPA identified in the Exemption Rule for determining whether title V is ''unnecessarily burdensome'' on a particular area source category include: (1) Whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category (70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (70 FR 75325); and (4) whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for the area source category, without relying on title V permits (70 FR 75326).

In discussing the above factors in the Exemption Rule, we explained that we considered on ''a case-by-case basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether considered together those factors demonstrated that compliance with title V requirements would be 'unnecessarily burdensome' on the category, consistent with section 502(a) of the Act.'' See 70 FR 75323. Thus, in the Exemption Rule, we explained that not all of the four factors must weigh in favor of exemption for EPA to determine that title V is unnecessarily burdensome for a particular area source category. Instead, the factors are to be considered in combination, and EPA determines whether the factors, taken together, support an exemption from title V for a particular source category.

We examined the four factors for both of the area source categories that we are proposing an exemption. As explained below, after evaluating the relevant factors, we concluded that the requirements of title V would be unnecessarily burdensome on the area source categories for which we are proposing an exemption from title V.

In the Exemption Rule, in addition to determining whether compliance with title V requirements would be unnecessarily burdensome on an area source category, we considered, consistent with the guidance provided by the legislative history of section 502(a), whether exempting the area source category would adversely affect public health, welfare or the environment. See 70 FR 15254–15255, March 25, 2005. As discussed below in sections VI.A and VI.B of this preamble, we have determined that the proposed exemptions from title V would not adversely affect public health, welfare and the environment.

A. Clay Ceramics Manufacturing

We compared the title V monitoring, recordkeeping, and reporting requirements (factor one) to the requirements in the proposed NESHAP for the Clay Ceramics Manufacturing area source category. EPA determined that the management practices currently used at most facilities is GACT, and the proposed rule requires recordkeeping that serves as monitoring and deviation reporting to assure compliance with the NESHAP. The monitoring component of the first factor favors title V exemption because this proposed standard provides monitoring that assures compliance with the requirements of the proposed rule. For atomized glaze spray operations, the proposed NESHAP requires the use of PM control systems (e.g., water-wash system or wet scrubber) or management practices (e.g., HVLP spray equipment); and periodic visual APCD inspections at existing sources; daily VE tests; or an EPA-approved alternate monitoring program. For kilns that fire glazed ceramic ware, the proposed NESHAP requires management practices (i.e., kiln fuel and firing temperature) and a daily peak firing temperature check. For those compliance options involving management practices, monitoring other than recordkeeping is not practical or appropriate. Records are required to assure that the management practices are followed, including records of the type of air pollution control used, the types and quantities of wet glazes used, the type of fuel used in the kilns, and the kiln peak firing temperature.

As part of the first factor, we have considered the extent to which title V could potentially enhance compliance for area sources covered by this proposed rule through recordkeeping or reporting requirements. We have considered the various title V recordkeeping and reporting requirements, including requirements for a 6-month monitoring report, deviation reports, and an annual certification in 40 CFR 70.6 and 71.6. For any affected clay ceramics manufacturing area source facility, the proposed NESHAP requires an initial notification and a notification of compliance status. The proposed clay ceramics manufacturing NESHAP also requires affected facilities to maintain records showing compliance with the required equipment standard and management practices. The information

required in the notifications and records is similar to the information that must be provided in the deviation reports required under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3). We acknowledge that title V might impose additional compliance requirements on this category, but we have determined that the monitoring, recordkeeping and reporting requirements of the proposed NESHAP for clay ceramics manufacturing are sufficient to assure compliance with the provisions of the NESHAP, and title V would not significantly improve those compliance requirements.

For the second factor, we determine whether title V permitting would impose a significant burden on the area sources in the category and whether that burden would be aggravated by any difficulty the source may have in obtaining assistance from the permitting agency. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. EPA estimated that the average cost of obtaining and complying with a title V permit was $38,500 per source for a 5-year permit period, including fees. See Information Collection Request for Part 70 Operating Permit Regulations, January 2000, EPA ICR Number 1587.05. EPA does not have specific estimates for the burdens and costs of permitting clay ceramics manufacturing area sources; however, there are certain activities associated with the part 70 and 71 rules. These activities are mandatory and impose burdens on the facility. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of consultants to help them understand and meet the permitting program's requirements. The ICR for part 70 provides additional information on the overall burdens and costs, as well as the relative burdens of each activity described here. Also, for a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In assessing the second factor for clay ceramics manufacturing facilities, we found that 34 of the 51 plants affected by the proposed rule are small businesses, most with only 100 or fewer employees. These small sources lack the technical resources needed to comprehend and comply with permitting requirements and the financial resources needed to hire the necessary staff or outside consultants. As discussed above, title V permitting would impose significant costs on these area sources, and, accordingly, we conclude that title V is a significant burden for sources in this category. Most are small businesses with limited resources, and under title V they would be subject to numerous mandatory activities with which they would have difficulty complying, whether they were issued a standard or a general permit. Furthermore, given the number of sources in the category and the relatively small size of many of those sources, it would likely be difficult for them to obtain assistance from the permitting authority. Thus, we find that factor two strongly supports title V exemption for clay ceramics manufacturing facilities.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. We explained above under the second factor that the costs of compliance with title V would impose a significant burden on most of the 51 clay ceramics manufacturing facilities affected by the proposed rule. We also concluded in considering the first factor that, while title V might impose additional requirements, the monitoring, recordkeeping and reporting requirements in the proposed NESHAP assure compliance with the equipment standard and management practices imposed in the NESHAP. In addition, below in our consideration of the fourth factor, we find that there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Because the costs of compliance with title V are so high, and the potential for gains in compliance is low, title V permitting is not justified for this source category. Accordingly, the third factor supports title V exemptions for clay ceramics manufacturing area sources.

The fourth factor we considered in determining if title V is unnecessarily burdensome is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. There are State programs in place to enforce this area source NESHAP, and we believe that the State programs are sufficient to assure compliance with this NESHAP. We also noted that EPA retains authority to enforce this NESHAP anytime under CAA sections 112, 113 and 114. We further noted that small business assistance programs required by CAA section 507 may be used to assist area sources that have been exempted from title V permitting. Also, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. We determined that these additional programs will supplement and enhance the success of compliance with this area source NESHAP. We believe that the statutory requirements for implementation and enforcement of this NESHAP by the delegated States and EPA and the additional assistance programs described above together are sufficient to assure compliance with this area source NESHAP without title V permits.

In applying the fourth factor in the Exemption Rule, where EPA had deferred action on the title V exemption for several years, we had enforcement data available to demonstrate that States were not only enforcing the provisions of the area source NESHAP that we exempted, but that the States were also providing compliance assistance to assure that the area sources were in the best position to comply with the NESHAP. See 70 FR 75325–75326. In proposing this rule, we do not have similar data available on the specific enforcement as in the Exemption rule, but we have no reason to think that States will be less diligent in enforcing this NESHAP. See 70 FR 75326. In fact, States must have adequate programs to enforce the section 112 regulations and provide assurances that they will enforce all NESHAP before EPA will delegate the program. See 40 CFR part 63, subpart E.

In light of all of the above, we conclude that there are implementation and enforcement programs in place that are sufficient to assure compliance with the Clay Ceramics Manufacturing NESHAP without relying on title V permitting.

Balancing the four factors for this area source category strongly supports the proposed finding that title V is unnecessarily burdensome. While title V might add additional compliance requirements if imposed, we conclude that there would not be significant improvements to the compliance requirements in the NESHAP because the requirements in this proposed rule are specifically designed to assure compliance with the standards and management practices imposed on this area source category. We also conclude that the costs of compliance with title V, in conjunction with the likely difficulty this number of small sources would have obtaining assistance from the permitting authority, would impose a significant burden on the sources. We determined that the high relative costs would not be justified given that there is likely to be little or no potential gain in compliance if title V were required. And, finally, there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Thus, we conclude that title V permitting is ''unnecessarily burdensome'' for the Clay Ceramics Manufacturing area source category.

In addition to evaluating whether compliance with title V requirements is ''unnecessarily burdensome'', EPA also considered, consistent with guidance provided by the legislative history of section 502(a), whether exempting the Clay Ceramics Manufacturing area source category from title V requirements would adversely affect public health, welfare, or the environment. Exemption of the Clay Ceramics Manufacturing area source category from title V requirements would not adversely affect public health, welfare, or the environment because the level of control would remain the same if a permit were required. The title V permit program does not impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. As stated in our consideration of factor one for this category, title V would not lead to significant improvements in the compliance requirements applicable to existing or new area sources.

Furthermore, one of the primary purposes of the title V permitting program is to clarify, in a single document, the various and sometimes complex regulations that apply to sources in order to improve understanding of these requirements and to help sources achieve compliance with the requirements. In this case, however, placing all requirements for the sources in a title V permit would do little to clarify the requirements applicable to the sources or assist them in compliance with those requirements because of the simplicity of the sources and the NESHAP, and the fact that these sources are not subject to other NESHAP. We have no reason to think that new sources would be substantially different from the existing sources. In addition, we explained in the Exemption Rule that requiring permits for the large number of area sources could, at least in the first few years of implementation, potentially adversely affect public health, welfare, or the environment by shifting State agency resources away from assuring compliance for major sources with existing permits to issuing new permits for these area sources, potentially reducing overall air program effectiveness. Based on the above analysis, we conclude that title V exemptions for the clay ceramics manufacturing area sources will not adversely affect public health, welfare, or the environment for all of the reasons explained above.

For the foregoing reasons, we are proposing to exempt the Clay Ceramics Manufacturing area source category from title V permitting requirements.

B. Secondary Nonferrous Metal Processing

We compared the title V monitoring, recordkeeping, and reporting requirements (factor one) to such requirements in the NESHAP for the Secondary Nonferrous Metal Processing area source category. The proposed rule requires that the affected sources conduct weekly monitoring of the required control device (i.e., baghouse or fabric filter) for existing sources and continuous monitoring of the required control device for new sources. As discussed above, we believe that these monitoring requirements are adequate to assure compliance with the control requirements specified in the proposed NESHAP. The monitoring component of the first factor favors title V exemption because this proposed standard provides monitoring that assures compliance with the requirements of the proposed rule.

We also considered the extent to which title V could potentially enhance compliance for area sources covered by this NESHAP through recordkeeping or reporting requirements. For any affected secondary nonferrous metal processing area source facility, the proposed NESHAP requires an initial notification and a compliance status report, which would include certifications by responsible officials that the facilities are in compliance and will continue to comply with the NESHAP. In addition, the affected facilities must maintain records showing compliance with the required monitoring. The required records are similar to the information that must be provided in the deviation reports required under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3). We believe that these requirements are adequate to assure compliance with the provisions of the NESHAP.

We acknowledge that title V includes some reporting requirements that are not in the proposed NESHAP, including requirements for a 6-month monitoring report, deviation reports, and an annual certification in 40 CFR 70.6 and 71.6. However, as described above, we have determined that the monitoring, recordkeeping and reporting requirements under the proposed NESHAP are sufficient to assure compliance with the provisions of the NESHAP. Therefore, we do not believe that these additional title V reporting requirements would result in significant improvements to the compliance requirements.

Under the second factor, we determined whether title V permitting would impose a significant burden on the area sources in the category and whether that burden would be aggravated by any difficulty the source may have in obtaining assistance from the permitting agency. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. EPA estimated that the average cost of obtaining and complying with a title V permit was $38,500 per source for a 5-year permit period, including fees. (See Information Collection Request for Part 70 Operating Permit Regulations, January 2000, EPA ICR Number 1587.05.) EPA does not have specific estimates for the burdens and costs of permitting secondary nonferrous metal processing area sources; however, there are certain source activities associated with the part 70 and 71 rules. These activities are mandatory and impose burdens on the source. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the

State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of professional scientists and engineers (consultants) to help them understand and meet the permitting program's requirements. The ICR for part 70 provides additional information on the overall burdens and costs, as well as the relative burdens of each activity described here. Also, for a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In assessing the second factor for secondary nonferrous metal processing facilities, we found that 6 of the 10 plants are small businesses, most with only a few employees. These small sources lack the technical resources needed to comply with permitting requirements and the financial resources needed to hire the necessary staff or outside consultants. As discussed above, title V permitting would impose significant economic and non-economic costs on these area sources, and, accordingly, we conclude that title V is a significant burden for sources in this category. In addition, many of the sources in this area source category are small businesses. Under title V, they would be subject to numerous mandatory activities, and because of limited resources, they would have difficulty complying, whether they were issued a standard or a general permit. Thus, we find that factor two supports title V exemption for secondary nonferrous metal processing facilities.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. We explained above under the second factor that the economic and non-economic costs of compliance with title V would impose a significant burden on many secondary nonferrous metal processing facilities. We also concluded in considering the first factor that the monitoring and recordkeeping requirements in the NESHAP are adequate to assure compliance with the management practices proposed in the NESHAP and that the additional title V compliance requirements would not significantly improve compliance with this NESHAP. In addition, in our consideration of the fourth factor as discussed below, we find that there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Because the costs, both economic and non-economic, of compliance with title V are so high, and the potential for gains in compliance is low, title V permitting is not justified for this source category. Accordingly, the third factor supports title V exemptions for secondary nonferrous metal processing area sources.

The fourth factor we considered in determining whether title V permitting for the Secondary Nonferrous Metals Processing area source category is unnecessarily burdensome is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with this NESHAP without relying on title V permits. There are State programs in place to enforce this area source NESHAP, and we believe that these State programs are sufficient to assure compliance with this NESHAP. Furthermore, EPA retains authority to enforce this NESHAP anytime under CAA sections 112, 113 and 114. In addition to the State programs and EPA's authorities to implement and enforce this NESHAP, small business assistance programs required by CAA section 507 may be used to assist area sources that have been exempted from title V permitting. Also, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. We believe that the statutory requirements for implementation and enforcement of this NESHAP by the delegated States and EPA and the additional assistance programs described above together are sufficient to assure compliance with this area source NESHAP without title V permits.

Furthermore, in applying the fourth factor in the Exemption Rule, where EPA had deferred action on the title V exemption for several years, we had enforcement data demonstrating that States were not only enforcing the provisions of those area source NESHAP, but that the States were also providing compliance assistance to assure that the area sources were in the best position to comply with the NESHAP. See 70 FR 75325–75326. Although we do not have similar data in this case because the Secondary Nonferrous Metals Processing area source NESHAP has yet to be promulgated and enforced, we have no reason to think that States will be less diligent in enforcing NESHAP.

In light of all of the above, we conclude that there are implementation and enforcement programs in place that are sufficient to assure compliance with the Secondary Nonferrous Metal Processing NESHAP without relying on title V permitting.

Based on our assessment of the four factors as described above, we find that, when considered together, the four factors demonstrate that compliance with title V would be unnecessarily burdensome for sources in the Secondary Nonferrous Metals Processing area source category. While title V might add additional compliance requirements, we believe that there would not be significant improvements to compliance with the NESHAP because the requirements in this proposed rule assure compliance with the standards. Furthermore, there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. On the other hand, the economic and non-economic costs of compliance with title V, would impose a significant burden on the sources. We believe that the high relative costs would not be justified given that there is likely to be little or no potential gain in compliance if title V were required. Based on these considerations, we conclude that title V permitting is ''unnecessarily burdensome'' for the Secondary Nonferrous Metal Processing area source category.

In addition to evaluating whether compliance with title V requirements is ''unnecessarily burdensome'', EPA considered, consistent with guidance provided by the legislative history of section 502(a), whether exempting the Secondary Nonferrous Metal Processing area source category from title V requirements would adversely affect public health, welfare, or the environment. Exemption of the Secondary Nonferrous Metal Processing area source category from title V requirements would not adversely affect public health, welfare, or the environment because the level of control would remain the same even if a permit were required. The title V permit program does not impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. As stated in our consideration of factor one for this category, title V would not lead to significant improvements in the

compliance requirements applicable to existing or new area sources.

Furthermore, one of the primary purposes of the title V permitting program is to clarify, in a single document, the various and sometimes complex regulations that apply to sources in order to improve understanding of these requirements and to help sources to achieve compliance with the requirements. In this case, however, placing all requirements for the sources in a title V permit would do little to clarify the requirements applicable to the sources or assist them in compliance with those requirements because of the simplicity of the sources and the NESHAP, and the fact that these sources are not subject to other NESHAP or to other requirements under the CAA. We have no reason to think that new sources would be substantially different from the existing sources. In addition, we explained in the Exemption Rule that requiring permits could, at least in the first few years of implementation, potentially adversely affect public health, welfare, or the environment by shifting State agency resources away from assuring compliance for major sources with existing permits to issuing new permits for these area sources, potentially reducing overall air program effectiveness. We therefore conclude that title V exemptions for the secondary nonferrous metal processing area sources will not adversely affect public health, welfare, or the environment for all of the reasons explained above.

For the foregoing reasons, we are proposing to exempt the Secondary Nonferrous Metal Processing area source category from title V permitting requirements.

VII. What are the impacts of the proposed standards for area sources?

A. Glass Manufacturing

1. Air Quality Impacts

For the three sources that would be required to install emission controls to meet the emission limits specified in this proposed rule, we estimated nationwide emissions of the glass manufacturing metal HAP to be 26.2 Mg/yr (28.9 tpy). We estimate that the rule as proposed would reduce nationwide emissions of the glass manufacturing metal HAP by about 25.6 Mg/yr (28.2 tpy). This proposed rule would also reduce emissions of PM by 377 Mg/yr (415 tpy). These estimates are based on the assumption that an ESP would be installed on one pressed and blown glass furnace, and that fabric filters would be installed on two pressed and blown glass furnaces.

We project that, during the first 3 years of the proposed standard, nine new furnaces would be constructed and that all nine furnaces would be in the container glass sector. Because none of these new furnaces are expected to use any of the glass manufacturing metal HAP as raw materials, we project that none of the nine new furnaces would be affected by this proposed rule. Therefore, we estimate that this proposed rule would have no air quality impacts on new sources.

Indirect or secondary air impacts of this rule as proposed would result from the increased electricity usage associated with the operation of control devices. Assuming that plants would purchase electricity from a power plant, we estimate that the standards as proposed would increase secondary emissions of criteria pollutants, including PM, sulfur dioxide (SO_2), nitrogen oxides (NO_X), and carbon monoxide (CO) from power plants. For three existing sources that would be required to install emission controls, the proposed rule would increase secondary PM emissions by 0.28 Mg/yr (0.31 tpy); secondary SO_2 emissions by about 11.1 Mg/yr (12.2 tpy); secondary NO_X emissions by about 5.5 Mg/yr (6.1 tpy); and secondary CO emissions by about 0.18 Mg/yr (0.20 tpy).

For the estimated nine new sources within the Glass Manufacturing industry over the next 3 years, we estimate no secondary air impacts because we project that none of the new sources would be affected sources under this proposed rule.

2. Water and Solid Waste Impacts

To comply with the rule as proposed, we expect that affected facilities would control emissions by installing and operating ESP or fabric filters, neither of which generates wastewater. Therefore, we project that this rule as proposed would have no water impacts. Glass manufacturers typically purchase highly refined and purified raw materials, and they usually recycle internal captured baghouse and ESP fines into the raw material to be fed back into the furnace. Therefore, we expect the solid waste impacts to be far less than if facilities were to dispose of their ESP and baghouse fines. We estimate that the proposed rule would generate 37.7 Mg/yr (41.6 tpy) of solid waste from existing sources. These estimates are based on the assumption that an ESP would be installed on one pressed and blown glass furnace, and that fabric filters would be installed on two pressed and blown glass furnaces. For new sources, we estimate that this proposed rule would have no impacts on solid waste generation.

3. Energy Impacts

Energy impacts consist of the electricity and fuel needed to operate control devices and other equipment that would be required under the proposed rule. We assume that affected facilities would comply with the rule as proposed by installing and operating either ESP or fabric filters which require electricity to operate. Specifically, we assumed that an ESP would be installed on one pressed and blown glass furnace, and that fabric filters would be installed on two pressed and blown glass furnaces. Under this scenario, we project that this rule as proposed would increase overall energy demand (i.e., electricity demand) for existing sources by about 1,160 megawatt-hours per year, or 7.1 thousand gigajoules per year (6.7 billion British thermal units per year). We estimate that none of the nine new sources projected to go into operation during the first 3 years of the standard would be affected by this proposed rule. Therefore, we are not expecting any energy impacts for new sources.

4. Cost Impacts

The estimated total capital costs of this proposed rule for existing sources are $1.42 million. These capital costs include the costs to purchase and install ESP or fabric filters on the three affected furnaces that are not currently controlled. The estimated annualized cost of the proposed rule for existing sources would be $491,000 per year. The annualized costs account for the annualized capital costs of the control and monitoring equipment, operation and maintenance expenses, performance testing, and recordkeeping costs for the three existing facilities within the source category that would be required to install new emission controls. The other affected facilities would incur costs only for submitting the notifications and for annual control device inspections because those facilities already meet the testing, monitoring, and recordkeeping requirements that would be required under the proposed rule.

We estimate that none of the nine new sources projected to go into operation during the first 3 years of the standard would be affected sources under this proposed rule. Therefore, we estimate no cost impacts for new sources.

5. Economic Impacts

Both the magnitude of control costs needed to comply with the proposed rule and the distribution of these costs

among affected facilities can have an impact in determining how the market would change in response to the rule. Total annualized costs for this proposed rule are estimated to be approximately $0.48 million. Only three facilities are estimated to require additional capital costs because of the proposed rule.

We obtained revenue data for two of the three companies that operate facilities that would be required to install emission controls under this proposed rule. Based on those data, cost-to-sales estimates for those two affected facilities would be 0.66 percent and 1.0 percent, respectively. Revenue data were not available for the other facility that would be affected by the proposed rule, so the national average value of shipments per worker from the 2002 Census of Manufacturers was used along with the average number of workers per facility to estimate revenues. The resulting costs for this and the other two facilities are relatively small and are not expected to result in a significant market impact whether they are passed on to the purchaser or absorbed by the company.

B. Clay Ceramics Manufacturing

Unlike the glass manufacturing industry, which still has some uncontrolled sources of urban HAP, sources in the clay ceramics manufacturing source category have made significant emission reductions through process changes and installation of control equipment. Affected sources are well-controlled and our proposed GACT determination reflects such controls. We estimate that the only impact to affected sources is the labor burden associated with the proposed reporting and recordkeeping requirements. The cost associated with recordkeeping and the one-time reporting requirements is estimated to be $974 per facility.

C. Secondary Nonferrous Metals Processing

Similar to the clay ceramics manufacturing industry, all of the affected sources in the secondary nonferrous metal processing category have installed control equipment on their furnace melting operations and are well-controlled. Affected sources are well-controlled and our proposed GACT determinations reflect such controls. We estimate that the only impact associated with the proposed rule is the reporting and recordkeeping requirements. The cost associated with recordkeeping and the one-time reporting requirements is estimated to be $390 per facility.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to OMB for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in the proposed NESHAP for Clay Ceramics Manufacturing Area Sources, Glass Manufacturing Area Sources, and Secondary Nonferrous Metals Processing Area Sources have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR No. 2274.01.

The recordkeeping and reporting requirements in the proposed rule is based on the information collection requirements in the part 63 General Provisions (40 CFR part 63, subpart A). These recordkeeping and reporting requirements are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to EPA's implementing regulations at 40 CFR part 2, subpart B.

The proposed NESHAP for Clay Ceramics Manufacturing area sources requires applicable one-time notifications required by the NESHAP General Provisions. Plant owners or operators would be required to include compliance certifications for the management practices in their Notifications of Compliance Status. The affected facilities are expected to already have the required control and monitoring equipment in place and already conduct the required monitoring and recordkeeping activities.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 196 labor hours per year at a cost of approximately $16,600 for 17 existing clay ceramics manufacturing area sources (51 existing sources averaged over 3 years). No capital/startup costs or operation and maintenance costs are associated with the proposed information collection requirements. No costs or burden hours are estimated for new clay ceramics manufacturing area sources because no new area sources are projected for the next 3 years.

The proposed NESHAP for Glass Manufacturing also would require applicable one-time notifications required by the NESHAP General Provisions, monitoring of control device parameters, and recordkeeping. The annual burden for this collection of information averaged over the first 3 years of this ICR is estimated to total 190 labor hours per year at a cost of $16,130 for the 21 glass manufacturing area source facilities that would be subject to this proposed rule. This burden estimate includes time for acquisition, installation, and use of monitoring technology and systems, one-time notifications, and recordkeeping. Total capital/startup costs associated with the monitoring requirements (e.g., costs for hiring performance test contractors and purchase of monitoring and file storage equipment) over the 3-year period of the ICR are estimated at $15,990, with operation and maintenance costs of $9,850/yr. No costs or burden estimates are estimated for new sources because no new sources are project for the next 3 years.

The proposed NESHAP for Secondary Nonferrous Metals Processing area sources requires one-time notifications required by the NESHAP General Provisions. Plant owners or operators would be required to conduct performance tests and include compliance certifications for the percent PM reduction achieved by the required control device in their Notifications of Compliance Status. The affected facilities are expected to already have the required control and monitoring equipment in place and already conduct the required monitoring and recordkeeping activities.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 15 labor hours per year at a cost of approximately $1,300 for 3 existing secondary nonferrous metals processing area sources (10 existing sources averaged over 3 years). No capital/startup costs or operation and maintenance costs are associated with the proposed information collection requirements. No costs or burden hours are estimated for new secondary nonferrous metals processing area sources because no new area sources are projected for the next 3 years.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time

needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency 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 40 CFR part 63 are listed in 40 CFR part 9.

To comment on EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this action, which includes this ICR, under Docket ID numbers EPA–HQ–OAR–2006–0424 (for Clay Ceramics Manufacturing), EPA–HQ–OAR–2006–0360 (for Glass Manufacturing), and EPA–HQ–OAR–2006–0940 (for Secondary Nonferrous Metals Processing). Submit any comments related to the ICR for the proposed rule to EPA and OMB. See the **ADDRESSES** section at the beginning of this preamble for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after September 20, 2007, a comment to OMB is best assured of having its full effect if OMB receives it by October 22, 2007. The final rules will respond to any OMB or public comments on the information collection requirements contained in the proposal.

C. Regulatory Flexibility Act

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

For the purposes of assessing the impacts of the proposed area source NESHAP on small entities, small entity is defined as: (1) A small business whose parent company meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 500 to 750 employees for Clay Ceramics Manufacturing, less than 750 to 1,000 employees for Glass Manufacturing, and less than 750 employees for Secondary Nonferrous Metals Processing, depending on the size definition for the affected NAICS code); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise, which is independently owned and operated and is not dominant in its field.

Based on our estimates, EPA does not expect any new clay ceramic or secondary nonferrous metal processing sources to be constructed in the foreseeable future and so therefore did not estimate the impacts for new clay ceramics manufacturing or secondary nonferrous metal processing sources. After considering the economic impacts of today's proposed rules on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. There would be no significant impacts on new or existing clay ceramics manufacturing facilities or secondary nonferrous metals processing facilities because these proposed rules do not create any new requirements or burdens other than minimal notification requirements. The minimal notification requirements consist of reading the rule and providing two initial notifications to EPA: One notifying EPA that the facility is subject to the rule and one notifying EPA that the facility is in compliance with the rule. These notifications may be submitted together. We estimate the cost of these one time notification requirements to be $974 for each clay ceramics manufacturing facility and $390 for each secondary nonferrous metals processing facility. These costs were estimated based on the costs of technical, management, and clerical support salaries. We also estimate that 34 clay ceramics facilities and 6 secondary nonferrous metals processing facilities are owned and operated by small businesses. These notification costs would be less than 0.25 percent for any of these small businesses.

Twenty one glass manufacturing facilities are estimated to require additional costs because of the proposed rule. None of these facilities are small businesses. Therefore, there is no significant impact on a substantial number of small entities.

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

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed rules do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any 1 year.

Thus, the proposed rules are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the proposed rules do not significantly or uniquely affect small governments. The proposed rules contain no requirements that apply to such governments, impose no obligations upon them, and would not result in expenditures by them of $100 million or more in any 1 year or any disproportionate impacts on them. Therefore, the proposed rules are not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

The proposed rules do not have federalism implications. They would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rules impose requirements on owners and operators of specified area sources and not State and local governments. Thus, Executive Order 13132 does not apply to the proposed rules.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comments on these proposed rules from State and local officials.

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

Executive Order 13175 (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to assure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The proposed rules do not have tribal implications, as specified in Executive Order 13175. They would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The proposed rules impose requirements on owners and operators of specified area sources and not tribal governments. Thus, Executive Order 13175 does not apply to the proposed rules. EPA specifically solicits additional comments on the proposed rules from tribal officials.

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

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rules are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks.

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

The glass manufacturing rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this proposed rule is not likely to have any significant adverse energy effects. Existing energy requirements for this industry would not be significantly impacted by the additional pollution controls or other equipment that may be required by this proposed rule.

The clay ceramics manufacturing and the secondary nonferrous metals processing proposed rules are not ''significant energy actions'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that these proposed rules are not likely to have any adverse energy effects. The energy requirements for these industries would remain at existing levels. No additional pollution controls or other equipment that would consume energy are required by these proposed rules.

I. National Technology Transfer Advancement Act

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

The proposed rule as it applies to glass manufacturing involves technical standards. EPA cites the following standards: EPA Methods 1, 1A, 2, 2A, 2C, 2F, 2G, 3, 3A, 3B, 4, 5, 17, and 22 in 40 CFR part 60, appendix A.

Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2F, 2G, and 22. The search and review results are in the dockets for the proposed rules.

The search identified one VCS as an acceptable alternative to EPA methods. The standard ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' is cited in the proposed rule for glass manufacturing area sources for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of the exhaust gas. This part of ASME PTC 19.10–1981 is an acceptable alternative to EPA Method 3B.

The search for emissions measurement procedures identified 14 other VCS. EPA determined that these 14 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the Glass Manufacturing proposed rule were impractical alternatives to EPA test methods for the purposes of the rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for the determinations for the 14

methods are included in the docket for the Glass Manufacturing proposed rule.

Sections 63.11440 and 63.11452 list the test methods included in the proposed rule. For the methods required or referenced by the proposed rule, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that these proposed rules will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. These proposed rules establish national standards for each area source category. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporations by reference, Reporting and recordkeeping requirements.

Dated: September 12, 2007.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[AMENDED]

2. Section 63.14 is amended by revising paragraph (i)(1) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(i) * * *

(1) ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus],'' IBR approved for §§ 63.309(k)(1)(iii), 63.865(b), 63.3166(a)(3), 63.3360(e)(1)(iii), 63.3545(a)(3), 63.3555(a)(3), 63.4166(a)(3), 63.4362(a)(3), 63.4766(a)(3), 63.4965(a)(3), 63.5160(d)(1)(iii), 63.9307(c)(2), 63.9323(a)(3), 63.11148(e)(3)(iii), 63.11155(e)(3), 63.11162(f)(3)(iii) and (f)(4), 63.11163(g)(1)(iii) and (g)(2), 63.11410(j)(1)(iii), Table 5 of subpart DDDDD of this part, 63.11452(b)(12), and 63.11466(c)(1)(iii).

* * * * *

3. Part 63 is amended by adding subpart RRRRRR to read as follows:

Subpart RRRRRR—National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources

Applicability and Compliance Dates

Sec.
63.11435 Am I subject to this subpart?
63.11436 What parts of my plant does this subpart cover?
63.11437 What are my compliance dates?

Standards, Compliance, and Monitoring Requirements

63.11438 What are the standards for new and existing sources?
63.11439 What are the initial compliance demonstration requirements for new and existing sources?
63.11440 What are the monitoring requirements for new and existing sources?
63.11441 What are the notification requirements?
63.11442 What are the recordkeeping requirements?

Other Requirements and Information

63.11443 What General Provisions apply to this subpart?
63.11444 What definitions apply to this subpart?
63.11445 Who implements and enforces this subpart?
63.11446—63.11447 [Reserved]

Tables to Subpart RRRRRR of Part 63

Table 1 to Subpart RRRRRR of Part 63—Applicability of General Provisions to Subpart RRRRRR

Subpart RRRRRR—National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources

Applicability and Compliance Dates

§ 63.11435 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a clay ceramics manufacturing facility (as defined in § 63.11444), with an atomized glaze spray booth or kiln that fires glazed ceramic ware, that processes more than 45 megagrams per year (Mg/yr) (50 tons per year (tpy)) wet clay and is an area source of hazardous air pollutant (HAP) emissions.

(b) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

63.11436 What parts of my plant does this subpart cover?

(a) This subpart applies to any existing, new, or reconstructed affected source located at a clay ceramics manufacturing facility.

(b) The affected source includes all atomized glaze spray booths and kilns that fire glazed ceramic ware located at a clay ceramics manufacturing facility.

(c) An affected source is existing if you commenced construction or reconstruction of the affected source before September 20, 2007.

(d) An affected source is new if you commenced construction or reconstruction of the affected source on or after September 20, 2007.

§ 63.11437 What are my compliance dates?

(a) If you have an existing affected source, you must comply with the standards no later than the date of publication of the final rule in the **Federal Register**.

(b) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (b)(1) and (2) of this section.

(1) If you start up your affected source on or before the date of publication of the final rule in the **Federal Register**, you must comply with this subpart no later than the date of publication of the final rule in the **Federal Register**.

(2) If you start up your affected source after the date of publication of the final rule in the **Federal Register**, you must comply with this subpart upon initial startup of your affected source.

Standards, Compliance, and Monitoring Requirements

§ 63.11438 What are the standards for new and existing sources?

(a) For each kiln that fires glazed ceramic ware, you must maintain the peak temperature below 1540 °C (2800 °F) and comply with one of the management practices in paragraphs (a)(1) and (2) of this section:

(1) Use natural gas, or equivalent clean-burning fuel, as the kiln fuel; or

(2) Use an electric-powered kiln.

(b) You must maintain annual wet glaze usage records for your facility.

(c) For each atomized glaze spray booth located at a clay ceramics manufacturing facility that uses more than 227 Mg/yr (250 tpy) of wet glaze(s), you must comply with the equipment standard requirements in paragraph (c)(1) of this section or the management practice in paragraph (c)(2) of this section.

(1) Route the emissions from the atomized glaze spray booth through an APCD, as defined in § 63.11444.

(i) Operate and maintain the APCD in accordance with the equipment manufacturer's specifications;

(ii) Monitor the APCD according to the applicable requirements in § 63.11440.

(2) Alternatively, use wet glazes containing less than 0.1 (weight) percent clay ceramics metal HAP.

(d) For each atomized glaze spray booth located at a clay ceramics manufacturing facility that uses 227 Mg/yr (250 tpy) or less of wet glaze(s), you must comply with one of the management practices in paragraphs (d)(1) and (2) of this section.

(1) Employ waste minimization practices, as defined in § 63.11444; or

(2) Alternatively, comply with the equipment standard requirements described in paragraph (c)(1) of this section or the management practice described in paragraph (c)(2) of this section.

(e) Surface applications (e.g., wet glazes) containing less than 0.1 (weight) percent clay ceramics metal HAP do not have to be considered in determination of the 227 Mg/yr (250 tpy) threshold for wet glaze usage.

§ 63.11439 What are the initial compliance demonstration requirements for new and existing sources?

(a) You must demonstrate initial compliance with the applicable management practices in § 63.11438 by submitting a Notification of Compliance Status. For any wet spray glaze operations controlled with an APCD, you must conduct an initial inspection of the control equipment as described in § 63.11440(b)(1) within 60 days of the compliance date and include the results of the inspection in the Notification of Compliance Status.

(b) You must demonstrate initial compliance with the applicable management practices in § 63.11438 by submitting the Notification of Compliance Status within 120 calendar days after the applicable compliance date specified in § 63.11437.

§ 63.11440 What are the monitoring requirements for new and existing sources?

(a) For each kiln firing glazed ceramic ware, you must conduct a daily check of the peak firing temperature. If the peak temperature exceeds 1540 °C (2800 °F), you must take corrective action according to your standard operating procedures.

(b) For each existing, new, or reconstructed affected source with an atomized glaze spray booth equipped with an APCD, you must demonstrate compliance by conducting the monitoring activities in paragraphs (b)(1) through (3) of this section:

(1) *Initial control device inspection.* You must conduct an initial inspection of each particulate matter (PM) control device according to the requirements in paragraphs (b)(1)(i) or (ii) of this section. You must conduct each inspection no later than 60 days after your applicable compliance date for each installed control device which has been operated within 60 days of the compliance date. For an installed control device which has not been operated within 60 days of the compliance date, you must conduct an initial inspection prior to startup of the control device.

(i) For each wet control system, you must verify the presence of water flow to the control equipment. You must also visually inspect the system ductwork and control equipment for leaks and inspect the interior of the control equipment (if applicable) for structural integrity and the condition of the control system. An initial inspection of the internal components of a wet control system is not required if an inspection has been performed within the past 12 months.

(ii) For each baghouse, you must visually inspect the system ductwork and baghouse unit for leaks. You must also inspect the inside of each baghouse for structural integrity and fabric filter condition. You must record the results of the inspection and any maintenance action in the logbook required in paragraph (d) of this section. An initial inspection of the internal components of a baghouse is not required if an inspection has been performed within the past 12 months.

(2) *Periodic inspections/maintenance.* Following the initial inspections, you must perform periodic inspections and maintenance of each PM control device according to the requirements in paragraphs (b)(2)(i) or (ii) of this section.

(i) You must inspect and maintain each wet control system according to the requirements in paragraphs (b)(2)(i)(A) through (C) of this section.

(A) You must conduct a daily inspection to verify the presence of water flow to the wet control system.

(B) You must conduct weekly visual inspections of the system ductwork and control equipment for leaks.

(C) You must conduct inspections of the interior of the wet control system (if applicable) to determine the structural integrity and condition of the control equipment every 12 months.

(ii) You must inspect and maintain each baghouse according to the requirements in paragraphs (b)(2)(ii)(A) and (B) of this section.

(A) You must conduct weekly visual inspections of the system ductwork for leaks.

(B) You must conduct inspections of the interior of the baghouse for structural integrity and to determine the condition of the fabric filter every 12 months.

(3) As an alternative to the monitoring activities in paragraph (b)(2) of this section, you may demonstrate compliance by:

(i) Conducting a daily 30-minute visible emissions (VE) test (i.e., no visible emissions) using EPA Method 22 (40 CFR part 60, appendix A–7); or

(ii) Using an approved alternative monitoring technique under § 63.8(f).

(c) If the results of the visual inspection, VE test, or alternative monitoring technique conducted under paragraph (b) of this section indicate an exceedance, you must take corrective action according to the equipment manufacturer's specifications or instructions.

(d) You must maintain records of your monitoring activities described in paragraphs (a) through (c) of this section. You may use your existing operating permit documentation to meet the monitoring requirements if it includes, but is not limited to, the

monitoring records listed in paragraphs (d)(1) through (5) of this section related to any kiln peak temperature checks, visual inspections, VE tests, or alternative monitoring:

(1) The date, place, and time;

(2) Person conducting the activity;

(3) Technique or method used;

(4) Operating conditions during the activity; and

(5) Results.

§ 63.11441 What are the notification requirements?

(a) You must submit an Initial Notification required by § 63.9(a)(2) no later than 120 calendar days after the applicable compliance date specified in § 63.11437. The Initial Notification must include the information specified in paragraphs (a)(1) through (4) of this section and may be combined with the Notification of Compliance Status required in paragraph (b) of this section.

(1) The name and address of the owner or operator;

(2) The address (i.e., physical location) of the affected source; and

(3) An identification of the relevant standard, or other requirement, that is the basis of the notification and source's compliance date.

(b) You must submit a Notification of Compliance Status required by § 63.9(h) no later than 120 calendar days after the applicable compliance date specified in § 63.11437. In addition to the information required in § 63.9(h)(2), your notification(s) must include each compliance certification in paragraphs (b)(1) through (3) of this section that applies to you and may be combined with the Initial Notification required in paragraph (a) of this section.

(1) For each kiln firing glazed ceramic ware, you must certify that you are maintaining the peak temperature below 1540°C (2800°F) and complying with one of the management practices in paragraphs (b)(2)(i) and (ii) of this section:

(i) Using natural gas, or equivalent clean-burning fuel, as the kiln fuel; or

(ii) Using an electric-powered kiln.

(2) For atomized glaze spray booths, you must certify that your facility's annual wet glaze usage is above or below 227 Mg/yr (250 tpy).

(3) For atomized glaze spray booths located at a clay ceramics manufacturing facility that uses more than 227 Mg/yr (250 tpy) of wet glaze(s), you must certify that:

(i) You are operating and maintaining an APCD in accordance with the equipment manufacturer's specifications, and you have conducted an initial control device inspection for each wet control system and baghouse associated with wet spray glaze operations; or

(ii) Alternatively, you are using wet glazes containing less than 0.1 (weight) percent clay ceramics metal HAP.

(4) For atomized glaze spray booths located at a clay ceramics manufacturing facility that uses 227 Mg/yr (250 tpy) or less of wet glaze(s), you must certify that:

(i) You are employing waste minimization practices, as defined in § 63.11444; or

(ii) You are complying with the requirements in § 63.11441(b)(3)(i) or (ii).

§ 63.11442 What are the recordkeeping requirements?

(a) You must keep the records specified in paragraphs (a)(1) and (2) of this section.

(1) A copy of each notification that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) Records of all required measurements needed to document compliance with management practices as required in § 63.10(b)(2)(vii), including records of monitoring and inspection data required by §§ 63.11440.

(b) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(c) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(d) You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.11443 What General Provisions apply to this subpart?

Table 1 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.16 apply to you.

§ 63.11444 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Air pollution control device (APCD) means any equipment that reduces the quantity of a pollutant that is emitted to the air. Examples of APCD currently used on glaze spray booths include, but are not limited to, wet scrubbers, fabric filters, water curtains, and water-wash systems.

Atomization means the conversion of a liquid into a spray or mist (i.e., collection of drops), often by passing the liquid through a nozzle.

Clay ceramics manufacturing facility means a plant site that manufactures pressed tile, sanitaryware, dinnerware, or pottery. For the purposes of this area source rule, the following types of facilities are not part of the regulated category: artisan potters, art studios, school and university ceramic arts programs, and any facility that uses less than 45 Mg/yr (50 tpy) of wet clay.

Clay ceramics metal HAP means an oxide or other compound of chromium, lead, manganese, or nickel, which were listed for Clay Ceramics Manufacturing in the Revised Area Source Category List (67 FR 70428, November 22, 2002).

Glaze means a coating of colored, opaque, or transparent material applied to ceramic products before firing.

Glaze spray booth means a type of equipment used for spraying glaze on ceramic products.

High-volume, low-pressure (HVLP) spray equipment means a type of air atomized spray equipment that operates at low atomizing air pressure (0.1 to 10 pounds per square inch (psi) at the air nozzle) and uses 15 to 30 cubic feet per minute (cfm) of air to minimize the amount of overspray and bounce back.

Kiln means equipment used for the initial curing or firing of glaze on ceramic ware. A kiln may operate continuously or by batch.

Nonatomizing glaze application technique means the application of glaze in the form of a liquid stream without atomization. Such techniques include, but are not limited to, dipping, centrifugal disc, waterfall, flow coaters, curtain coaters, silk-screening, and any direct application by roller, brush, pad, or other means facilitating direct transfer of glaze.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Waste minimization practices mean those routine procedures employed to minimize material losses and prevent unnecessary waste generation, for example, minimizing glaze overspray emissions using HVLP spray equipment (defined in this section) or similar spray equipment; minimizing HAP emissions during cleanup of spray glazing

equipment; operating and maintaining spray glazing equipment according to manufacturer's instructions; and minimizing spills through careful handling of HAP-containing glaze materials.

Water curtain means an APCD that draws the exhaust stream through a continuous curtain of moving water to scrub out suspended particulate. Also called a drip curtain or waterfall.

Water-wash system means an APCD that uses a series of baffles to redirect the upward exhaust stream through a water wash chamber with downward water flow to scrub out suspended particulate.

§ 63.11445 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the applicability requirements in §§ 63.11435 and 63.11436, the compliance date requirements in § 63.11437, and the management practices in § 63.11438.

(2) Approval of a major change to a test method under § 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

§§ 63.11446–63.11447 [Reserved]

Tables to Subpart RRRRRR of Part 63

As stated in § 63.11443, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

TABLE 1 TO SUBPART RRRRRR OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART RRRRRR

Citation	Subject
63.1(a)(1)–(a)(4), (a)(6), (a)(10)–(a)(12), (b)(1), (b)(3), (c)(1), (c)(2)[1], (c)(5), (e).	Applicability.
63.2.	Definitions.
63.3	Units and Abbreviations.
63.4	Prohibited Activities and Circumvention.
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1), (f), (g), (i), (j)	Compliance with Standards and Maintenance Requirements.
63.8(a)(1), (a)(2), (b), (c)(1)(i)–(c)(1)(ii), (c)(2), (c)(3), (f)	Monitoring Requirements.
63.9(a), (b)(1), (b)(2), (b)(5), (c), (d), (h)(1)–(h)(3), (h)(5), (h)(6), (i), (j)	Notification Requirements.
63.10(a), (b)(1), (b)(2)(vii), (b)(2)(xiv), (b)(3), (c), (c)(1), (f)	Recordkeeping and Reporting Requirements.
63.12	State Authority and Delegations.
63.13	Addresses.
63.14	Incorporations by Reference.
63.15	Availability of Information and Confidentiality.
63.16	Performance Track Provisions.

[1] Section 63.11435(b) of this subpart exempts area sources from the obligation to obtain title V operating permits.

4. Part 63 is amended by adding subpart SSSSSS to read as follows:

Subpart SSSSSS—National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources

Applicability and Compliance Dates

Sec.
63.11448 Am I subject to this subpart?
63.11449 What parts of my plant does this subpart cover?
63.11450 What are my compliance dates?

Standards, Compliance, and Monitoring Requirements

63.11451 What are the standards for new and existing sources?
63.11452 What are the performance test requirements for new and existing sources?
63.11453 What are the initial compliance demonstration requirements for new and existing sources?
63.11454 What are the monitoring requirements for new and existing sources?
63.11455 What are the continuous compliance requirements for new and existing sources?

Notifications and Records

63.11456 What are the notification requirements?
63.11457 What are the recordkeeping requirements?

Other Requirements and Information

63.11458 What General Provisions apply to this subpart?
63.11459 What definitions apply to this subpart?
63.11460 Who implements and enforces this subpart?
63.11461 [Reserved]

Tables to Subpart SSSSSS of Part 63

Table 1 to Subpart SSSSSS of Part 63—Emission Limits
Table 2 to Subpart SSSSSS of Part 63—Applicability of General Provisions to Subpart SSSSSS

Subpart SSSSSS—National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources

Applicability and Compliance Dates

§ 63.11448 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a glass manufacturing facility that is an area source of hazardous air pollutant (HAP) emissions and meets the criteria specified in paragraphs (a)(1) through (3) of this section.

(1) A glass manufacturing facility is a plant site that manufactures flat glass, glass containers, or pressed and blown glass by melting a mixture of raw materials, as defined in § 63.11459, to produce molten glass and forming the molten glass into sheets, containers, or other shapes.

(2) An area source of HAP emissions is any stationary source or group of

stationary sources within a contiguous area under common control that does not have the potential to emit any single HAP at a rate of 9.07 megagrams per year (Mg/yr) (10 tons per year (tpy)) or more and any combination of HAP at a rate of 22.68 Mg/yr (25 tpy) or more.

(3) Your glass manufacturing facility produces glass that contains compounds of one or more glass manufacturing metal HAP, as defined in § 63.11459, as raw materials in a glass manufacturing batch formulation.

(b) [Reserved]

§ 63.11449 What parts of my plant does this subpart cover?

(a) This subpart applies to each existing, new, or reconstructed affected glass melting furnace that is located at a glass manufacturing facility and satisfies the requirements specified in paragraphs (a)(1) and (2) of this section.

(1) The furnace is charged with compounds of one or more glass manufacturing metal HAP as raw materials.

(2) The furnace is used to produce glass at a rate of at least 45 Mg/yr (50 tpy).

(b) An affected source is an existing source if you commenced construction or reconstruction of the affected source before September 20, 2007.

(c) An affected source is a new (or reconstructed) source if you commenced construction (or reconstruction) of the affected source on or after September 20, 2007.

§ 63.11450 What are my compliance dates?

(a) If you have an existing affected source, you must comply with the applicable emission limits specified in § 63.11451 of this subpart no later than 2 years after the date of publication of the final rule in the **Federal Register**. As specified in section 112(i)(3)(B) of the Clean Air Act and in § 63.6(i)(4)(i)(A), you may request that the Administrator or delegated authority grant an extension allowing up to 1 additional year to comply with the applicable emission limits if such additional period is necessary for the installation of emission controls.

(b) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (b)(1) and (2) of this section.

(1) If you start up your affected source on or before the date of publication of the final rule in the **Federal Register**, you must comply with the applicable emission limits specified in § 63.11451 of this subpart no later than the date of publication of the final rule in the **Federal Register**.

(2) If you start up your affected source after the date of publication of the final rule in the **Federal Register**, you must comply with the applicable emission limits specified in § 63.11451 of this subpart upon initial startup of your affected source.

(c) If you own or operate a furnace that produces glass at an annual rate of less than 45 Mg/yr (50 tpy), and you increase glass production for that furnace to an annual rate of at least 45 Mg/yr (50 tpy), and the furnace is charged with compounds of one or more glass manufacturing metal HAP, you must comply with the applicable emission limits specified in § 63.11451 within 2 years of the date on which you increased the glass production rate for the furnace to at least 45 Mg/yr (50 tpy).

(d) If you own or operate a furnace that produces glass at an annual rate of at least 45 Mg/yr (50 tpy) and is not charged with glass manufacturing metal HAP, and you begin production of a glass product that includes one or more glass manufacturing metal HAP as raw materials, you must comply with the applicable emission limits specified in § 63.11451 within 2 years of the date on which you introduced production of the glass product that contains glass manufacturing metal HAP.

(e) You must meet the notification requirements in § 63.11456 according to the schedule in § 63.11456 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with emission limits specified in this subpart.

Standards, Compliance, and Monitoring Requirements

§ 63.11451 What are the standards for new and existing sources?

If you are an owner or operator of an affected furnace, as defined in § 63.11449(a), you must meet the applicable emission limits specified in Table 1 to this subpart.

§ 63.11452 What are the performance test requirements for new and existing sources?

(a) If you own or operate an affected furnace that is subject to an emission limit specified in Table 1 to this subpart, you must conduct a performance test according to paragraphs (a)(1) and (2) and paragraph (b) of this section.

(1) For each affected furnace, you must conduct a performance test within 180 days after your compliance date and report the results in your Notification of Compliance Status, except as specified in paragraph (a)(2) of this section.

(2) You are not required to conduct a performance test on the affected furnace if you satisfy the conditions described in paragraphs (a)(2)(i) through (iii) of this section.

(i) You conducted a performance test on the affected furnace within the past 5 years of the compliance date using the same test methods and procedures specified in paragraph (b) of this section.

(ii) The performance test demonstrated that the affected furnace met the applicable emission limits specified in Table 1 to this subpart.

(iii) Either no process changes have been made since the test, or you can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance with the applicable emission limit.

(b) You must conduct each performance test according to the requirements in § 63.7 and paragraphs (b)(1) through (20) of this section.

(1) Install and validate all monitoring equipment required by this subpart before conducting the performance test.

(2) Conduct the performance test according to the requirements in § 63.7 and under the conditions specified in this section.

(3) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(4) Conduct the test while the source is operating at the maximum production rate.

(5) Conduct at least three separate test runs with a minimum duration of 1 hour for each test run, as specified in § 63.7(e)(3).

(6) Record the test date.

(7) Identify the emission source tested.

(8) Collect and record the emission test data listed in this section for each run of the performance test.

(9) Locate all sampling sites at the outlet of the control device or at the stack prior to any releases to the atmosphere.

(10) Select the locations of sampling ports and the number of traverse points using Method 1 or 1A of 40 CFR part 60, appendix A–1.

(11) Measure the gas velocity and volumetric flow rate using Method 2, 2A, 2C, 2F, or 2G of 40 CFR part 60, appendices A–1 and A–2, during each test run.

(12) Conduct gas molecular weight analysis using Methods 3, 3A, or 3B of 40 CFR part 60, appendix A–2, or ASME PTC 19.10–1981—Part 10, during each test run.

(13) Measure gas moisture content using Method 4 of 40 CFR part 60, appendix A–3, during each test run.

(14) Measure the particulate matter (PM) mass emission rate at the outlet of the control device or at the stack using Method 5 or 17 of 40 CFR part 60, appendices A–3 or A–6, for each test run.

(15) Calculate the PM mass emission rate in the exhaust stream for each test run.

(16) Measure and record the glass production rate (kilograms (tons) per hour of product) for each test run.

(17) To meet the PM emission limit, calculate the production-based PM mass emission rate (g/kg (lbs/ton)) for each test run using Equation 1.

$$MP = \frac{ER}{P} \qquad \text{(Equation 1)}$$

Where:

MP = production-bass PM mass emission rate, grams of PM per kilogram (pounds of PM per ton) of glass produced.

ER = PM mass emission rate measured using Methods 5 or 17 during each performance test run, grams (pounds) per hour.

P = average glass production rate for the performance test, kilograms (tons) of glass produced per hour.

(18) Calculate the 3-hour block average production-based PM mass emission rate as the average of the production-based PM mass emission rates for each test run.

(19) To meet the metal HAP emission limit, calculate the production-based metal HAP mass emission rate (g/kg (lbs/ton)) for each test run using Equation 2.

$$MPM = \frac{ERM}{P} \qquad \text{(Equation 2)}$$

Where:

MPM = production-bass metal HAP mass emission rate, grams of metal HAP per kilogram (pounds of metal HAP per ton) of glass produced.

ERM = Metal HAP mass emission rate measured using Method 29 of 40 CFR part 60, appendix A–8 during each performance test run, grams (pounds) per hour.

P = average glass production rate for the performance test, kilograms (tons) of glass produced per hour.

(20) Calculate the 3-hour block average production-based metal HAP mass emission rate as the average of the production-based metal HAP mass emission rates for each test run.

§ 63.11453 What are the initial compliance demonstration requirements for new and existing sources?

(a) If you own or operate an affected source, you must submit a Notification of Compliance Status in accordance with § 63.9(h) and 63.11456(b).

(b) For each existing affected furnace that is subject to the emission limits specified in Table 1 to this subpart, you must demonstrate initial compliance according to the requirements in paragraphs (b)(1) through (4) of this section.

(1) For each fabric filter that is used to meet the emission limits specified in Table 1 to this subpart, you must visually inspect the system ductwork and fabric filter unit for leaks. You must also inspect the inside of each fabric filter for structural integrity and fabric filter condition. You must record the results of the inspection and any maintenance action as required in § 63.11457.

(2) For each electrostatic precipitator (ESP) that is used to meet the emission limits specified in Table 1 to this subpart, you must verify the proper functioning of the electronic controls for corona power and rapper operation, that the corona wires are energized, and that adequate air pressure is present on the rapper manifold. You must also visually inspect the system ductwork and ESP housing unit and hopper for leaks and inspect the interior of the ESP to determine the condition and integrity of corona wires, collection plates, hopper, and air diffuser plates.

(3) You must conduct each inspection specified in paragraphs (b)(1) and (2) of this section no later than 60 days after your applicable compliance date specified in § 63.11450, except as specified in paragraph (b)(3)(i) and (ii) of this section.

(i) An initial inspection of the internal components of a fabric filter is not required if an inspection has been performed within the past 12 months.

(ii) An initial inspection of the internal components of an ESP is not required if an inspection has been performed within the past 24 months.

(4) You must satisfy the applicable requirements for performance tests specified in § 63.11452.

(c) For each new or reconstructed affected furnace that is subject to the emission limits specified in Table 1 to this subpart and is controlled with a fabric filter, you must install, operate, and maintain a bag leak detection system according to paragraphs (c)(1) through (3) of this section.

(1) Each bag leak detection system must meet the specifications and requirements in paragraphs (c)(1)(i) through (viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 1 milligram per dry standard cubic meter (0.00044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator shall continuously record the output from the bag leak detection system using electronic or other means (e.g., using a strip chart recorder or a data logger).

(iii) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (c)(1)(iv) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) In the initial adjustment of the bag leak detection system, you must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(v) Following initial adjustment, you shall not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided in paragraph (c)(1)(vi) of this section.

(vi) Once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (c)(2) of this section.

(vii) You must install the bag leak detection sensor downstream of the fabric filter.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) You must develop and submit to the Administrator or delegated authority for approval a site-specific monitoring plan for each bag leak detection system. You must operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (c)(2)(i) through (vi) of this section.

(i) Installation of the bag leak detection system;

(ii) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system, including quality assurance procedures;

(iv) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(v) How the bag leak detection system output will be recorded and stored; and

(vi) Corrective action procedures as specified in paragraph (c)(3) of this section. In approving the site-specific monitoring plan, the Administrator or delegated authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

(3) For each bag leak detection system, you must initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (c)(2)(vi) of this section, you must alleviate the cause of the alarm within 3 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(i) Inspecting the fabric filter for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in PM emissions;

(ii) Sealing off defective bags or filter media;

(iii) Replacing defective bags or filter media or otherwise repairing the control device;

(iv) Sealing off a defective fabric filter compartment;

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system; or

(vi) Shutting down the process producing the PM emissions.

(d) For each new or reconstructed affected furnace that is subject to the emission limits specified in Table 1 to this subpart and is controlled with an ESP, you must install, operate, and maintain according to the manufacturer's specifications, one or more continuous parameter monitoring systems (CPMS) for measuring and recording the secondary voltage and secondary electrical current to each field of the ESP according to paragraphs (d)(1) through (13) of this section.

(1) The CPMS must have an accuracy of 1 percent of the secondary voltage and secondary electrical current, or better.

(2) Your CPMS must be capable of measuring the secondary voltage and secondary electrical current over a range that extends from a value that is at least 20 percent less than the lowest value that you expect your CPMS to measure, to a value that is at least 20 percent greater than the highest value that you expect your CPMS to measure.

(3) The signal conditioner, wiring, power supply, and data acquisition and recording system of your CPMS must be compatible with the output signal of the sensors used in your CPMS.

(4) The data acquisition and recording system of your CPMS must be able to record values over the entire range specified in paragraph (d)(2) of this section.

(5) The data recording system associated with your CPMS must have a resolution of one-half of the required overall accuracy of your CPMS, as specified in paragraph (d)(1) of this section, or better.

(6) Your CPMS must be equipped with an alarm system that will sound when the system detects a decrease in secondary voltage or secondary electrical current below the alarm set point established according to paragraph (d)(7) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(7) In the initial adjustment of the CPMS, you must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(8) You must install each sensor of the CPMS in a location that provides representative measurement of the appropriate parameter over all operating conditions, taking into account the manufacturer's guidelines.

(9) You must perform an initial calibration of your CPMS based on the procedures specified in the manufacturer's owner's manual.

(10) Your CPMS must be designed to complete a minimum of one cycle of operation for each successive 15-minute period. To have a valid hour of data, you must have at least three of four equally-spaced data values (or at least 75 percent of the total number of values if you collect more than four data values per hour) for that hour (not including startup, shutdown, malfunction, or out of control periods).

(11) You must record valid data from at least 90 percent of the hours during which the affected source or process operates.

(12) You must record the results of each inspection, calibration, initial validation, and accuracy audit.

(13) At all times, you must maintain your CPMS including, but not limited to, maintaining necessary parts for routine repairs of the CPMS.

(e) For each new or reconstructed affected furnace that is subject to the emission limits specified in Table 1 to this subpart and is controlled a device other than a fabric filter or an ESP, you must prepare and submit a monitoring plan to EPA or the delegated authority for approval. Each plan must contain the information in paragraphs (e)(1) through (5) of this section.

(1) A description of the device;

(2) Test results collected in accordance with § 63.11452 verifying the performance of the device for reducing PM to the levels required by this subpart;

(3) Operation and maintenance plan for the control device (including a preventative maintenance schedule consistent with the manufacturer's instructions for routine and long-term maintenance) and continuous monitoring system;

(4) A list of operating parameters that will be monitored to maintain continuous compliance with the applicable emission limits; and

(5) Operating parameter limits based on monitoring data collected during the performance test.

§ 63.11454 What are the monitoring requirements for new and existing sources?

(a) For each monitoring system required by this subpart, you must install, calibrate, operate, and maintain the monitoring system according to the manufacturer's specifications and the requirements specified in paragraphs (a)(1) through (6) of this section.

(1) You must install each sensor of your monitoring system in a location that provides representative measurement of the appropriate parameter over all operating conditions, taking into account the manufacturer's guidelines.

(2) You must perform an initial calibration of your monitoring system based on the manufacturer's recommendations.

(3) You must use a monitoring system that is designed to complete a minimum of one cycle of operation for each successive 15-minute period.

(4) For each existing affected furnace, you must record the value of the monitored parameter at least every 8 hours. The value can be recorded electronically or manually.

(5) You must record the results of each inspection, calibration, monitoring system maintenance, and corrective action taken to return the monitoring system to normal operation.

(6) At all times, you must maintain your monitoring system including, but not limited to, maintaining necessary parts for routine repairs of the system.

(b) For each existing furnace that subject to the emission limits specified in Table 1 to this subpart and is controlled with an ESP, you must meet the requirements specified in paragraphs (b)(1) or (2) of this section.

(1) You must monitor the secondary voltage and secondary electrical current to each field of the ESP according to the requirements of this section, or

(2) You must submit a request for alternative monitoring, as described in paragraph (g) of this section.

(c) For each existing furnace that is subject to the emission limits specified in Table 1 to this subpart and is controlled with a fabric filter, you must meet the requirements specified in paragraphs (c)(1) or (2) of this section.

(1) You must monitor the inlet temperature to the fabric filter according to the requirements of this section, or

(2) You must submit a request for alternative monitoring, as described in paragraph (g) of this section.

(d) For each new or reconstructed furnace that is subject to the emission limits specified in Table 1 to this subpart and is controlled with an ESP, you must monitor the voltage and electrical current to each field of the ESP on a continuous basis using one or more CPMS according to the requirements for CPMS specified in § 63.11453(d).

(e) For each new or reconstructed furnace that is subject to the emission limits specified in Table 1 to this subpart and is controlled with a fabric filter, you must install and operate a bag leak detection system according to the requirements for CPMS specified in § 63.11453(c).

(f) For each new, reconstructed, or existing furnace that is subject to the emission limits specified in Table 1 to this subpart and is equipped with a control device other than an ESP or fabric filter, you must meet the requirements in § 63.8(f) and paragraph (f)(1) of this section.

(1) Submit a request for approval of alternative monitoring methods to the Administrator no later than the submittal date for the Notification of Compliance Status, as specified in § 63.11456(b). The request must contain the information specified in paragraphs (f)(1)(i) through (v) of this section.

(i) Description of the alternative add-on air pollution control device (APCD).

(ii) Type of monitoring device or method that will be used, including the sensor type, location, inspection procedures, quality assurance and quality control (QA/QC) measures, and data recording device.

(iii) Operating parameters that will be monitored.

(iv) Frequency that the operating parameter values will be measured and recorded.

(v) Procedures for inspecting the condition and operation of the control device and monitoring system.

(g) If you wish to use a monitoring method other than those specified in paragraphs (b)(1) or (c)(1) of this section, you must meet the requirements in § 63.8(f) and paragraph (g)(1) of this section.

(1) Submit a request for approval of alternative monitoring methods to the Administrator no later than the submittal date for the Notification of Compliance Status, as specified in § 63.11456(b). The request must contain the information specified in paragraphs (g)(1)(i) through (v) of this section.

(i) Type of monitoring device or method that will be used, including the sensor type, location, inspection procedures, QA/QC measures, and data recording device.

(ii) Operating parameters that will be monitored.

(iii) Frequency that the operating parameter values will be measured and recorded.

(v) Procedures for inspecting the condition and operation of the monitoring system.

(vi) Explanation for how the alternative monitoring method will provide assurance that the emission control device is operating properly.

(2) [Reserved]

§ 63.11455 What are the continuous compliance requirements for new and existing sources?

(a) You must be in compliance with the applicable emission limits and work practices in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) For each affected furnace that is subject to the emission limits specified in Table 1 to this subpart, you must monitor the performance of the furnace emission control device according to the requirements in §§ 63.6(e)(1) and 63.8(c) and paragraphs (c)(1) through (4) of this section.

(1) For each affected furnace that is controlled with an ESP, you must monitor the parameters specified in § 63.11454(b) in accordance with the requirements of § 63.11454(a) or as specified in your approved alternative monitoring plan.

(2) For each affected furnace that is controlled with a fabric filter, you must monitor the parameter specified in § 63.11454(c) in accordance with the requirements of § 63.11454(a) or as specified in your approved alternative monitoring plan.

(3) For each affected furnace that is controlled with a device other than a fabric filter or ESP, you must comply with the requirements of your approved alternative monitoring plan, as required in § 63.11454(g).

(4) For each monitoring system that is required under this subpart, you must keep the records specified in § 63.11457.

(d) Following the initial inspections, you must perform periodic inspections and maintenance of each affected furnace control device according to the requirements in paragraphs (d)(1) through (4) of this section.

(1) For each fabric filter, you must conduct inspections at least every 12 months according to paragraphs (d)(1)(i) through (iii) of this section.

(i) You must inspect the ductwork and fabric filter unit for leakage.

(ii) You must inspect the interior of the fabric filter for structural integrity and to determine the condition of the fabric filter.

(iii) If an initial inspection is not required, as specified in § 63.11453(b)(3)(i), the first inspection must not be more than 12 months from the last inspection.

(2) For each ESP, you must conduct inspections according to the requirements in paragraphs (d)(2)(i) through (iii) of this section.

(i) You must conduct visual inspections of the system ductwork, housing unit, and hopper for leaks at least every 12 months.

(ii) You must conduct inspections of the interior of the ESP to determine the condition and integrity of corona wires, collection plates, plate rappers, hopper, and air diffuser plates every 24 months.

(iii) If an initial inspection is not required, as specified in § 63.11453(b)(3)(ii), the first inspection must not be more than 24 months from the last inspection.

(3) You must record the results of each periodic inspection specified in this section in a logbook (written or electronic format), as specified in § 63.11457.

(4) If the results of a required inspection indicate a problem with the operation of the emission control system, you must take immediate corrective action to return the control device to normal operation according to the equipment manufacturer's specifications or instructions.

Notifications and Records

§ 63.11456 What are the notification requirements?

(a) If you own or operate an affected furnace, as defined in § 63.11449(a), you must submit an Initial Notification in accordance with § 63.9(b) and paragraphs (a)(1) through (3) of this section by the dates specified.

(1) As specified in § 63.9(b)(2) and (3), if you start up your affected source before the date of publication of the final rule in the **Federal Register**, you must submit an Initial Notification not later than 120 calendar days after the date of publication of the final rule in the **Federal Register**.

(2) The Initial Notification must include the information specified in § 63.9(b)(2)(i) to (iv).

(3) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after the date of publication of the final rule in the **Federal Register**, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(b) You must submit a Notification of Compliance Status in accordance with § 63.9(h) and the requirements in paragraphs (b)(1) and (2) of this section.

(1) If you own or operate an affected furnace and are required to conduct a performance test, you must submit a Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test, according to § 60.8 or § 63.10(d)(2).

(2) If you own or operate an affected furnace and satisfy the conditions specified in § 63.11452(a)(2) and are not required to conduct a performance test, you submit a Notification of Compliance Status, including the results of the previous performance test, before the close of business on the compliance date specified in § 63.11450, according to § 63.10(d)(2).

§ 63.11457 What are the recordkeeping requirements?

(a) You must keep the records specified in paragraphs (a)(1) through (9) of this section.

(1) A copy of any Initial Notification and Notification of Compliance Status that you submitted and all documentation supporting those notifications, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) The records specified in § 63.10(b)(2) and (c)(1) through (13).

(4) The records required to show continuous compliance with each emission limit that applies to you, as specified in § 63.11455.

(5) For each affected source, records of production rate on a process throughput basis (either feed rate to the process unit or discharge rate from the process unit).

(i) The production data must include the amount (weight or weight percent) of each ingredient in the batch formulation, including all glass manufacturing metal HAP compounds.

(ii) [Reserved]

(6) Records of maintenance activities and inspections performed on control devices as specified in §§ 63.11453(b) and 63.11455(d), according to paragraphs (a)(6)(i) through (v) of this section.

(i) The date, place, and time of inspections of control device ductwork, interior, and operation.

(ii) Person conducting the inspection.

(iii) Technique or method used to conduct the inspection.

(iv) Control device operating conditions during the time of the inspection.

(v) Results of the inspection and description of any corrective action taken.

(7) Records of all required monitoring data and supporting information including all calibration and maintenance records.

(8) For each bag leak detection system, the records specified in paragraphs (a)(8)(i) through (iii) of this section.

(i) Records of the bag leak detection system output;

(ii) Records of bag leak detection system adjustments, including the date and time of the adjustment, the initial bag leak detection system settings, and the final bag leak detection system settings; and

(iii) The date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, the cause of the alarm, an explanation of the actions taken, the date and time the cause of the alarm was alleviated, and whether the alarm was alleviated within 3 hours of the alarm.

(9) Records of any approved alternative monitoring method(s) or test procedure(s).

(b) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(c) You must record the results of each inspection and maintenance action in a logbook (written or electronic format). You must keep the logbook onsite and make the logbook available to the permitting authority upon request.

(d) As specified in § 63.10(b)(1), you must keep each record for a minimum of 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.11458 What General Provisions apply to this subpart?

You must satisfy the requirements of the General Provisions in 40 CFR part 63, subpart A, as specified in Table 2 to this subpart.

§ 63.11459 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Air pollution control device (APCD) means any equipment that reduces the quantity of a pollutant that is emitted to the air.

Cullet means recycled glass that is mixed with raw materials and charged to a glass melting furnace to produce glass.

Electrostatic precipitator (ESP) means an APCD that removes PM from an exhaust gas stream by applying an electrical charge to particles in the gas stream and collecting the charged particles on plates carrying the opposite electrical charge.

Fabric filter means an APCD used to capture PM by filtering a gas stream through filter media.

Glass manufacturing metal HAP means an oxide or other compound of any of the following metals included in the list of urban HAP for the Integrated Urban Air Toxics Strategy and for which Glass Manufacturing was listed as an area source category: arsenic, cadmium, chromium, lead, manganese, and nickel.

Glass melting furnace means a unit comprising a refractory-lined vessel in which raw materials are charged, melted at high temperature, refined, and conditioned to produce molten glass. The unit includes foundations, superstructure and retaining walls, raw material charging system, heat exchangers, melter cooling system, exhaust system, refractory brick work, fuel supply and electrical boosting equipment, integral control systems and instrumentation, and appendages for conditioning and transferring molten glass to forming apparatuses.

Particulate matter (PM) means, for purposes of this subpart, emissions of PM that serve as a measure of total particulate emissions, as measured by Methods 5 or 17 (40 CFR part 60, appendices A–3 and A–6), and as a surrogate for glass manufacturing metal HAP compounds contained in the PM including, but not limited to, arsenic, cadmium, chromium, lead, manganese, and nickel.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Raw material means minerals, such as silica sand, limestone, and dolomite; inorganic chemical compounds, such as soda ash (sodium carbonate), salt cake (sodium sulfate), and potash (potassium carbonate); metal oxides and other metal-based compounds, such as lead oxide, chromium oxide, and sodium antimonate; metal ores, such as chromite and pyrolusite; and other substances that are intentionally added to a glass manufacturing batch and melted in a glass melting furnace to produce glass. Metals that are naturally-occurring trace constituents or contaminants of other substances are not considered to be raw materials.

§ 63.11460 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (3) of this section.

(1) Approval of alternatives to the applicability requirements in §§ 63.11448 and 63.11449, the compliance date requirements in § 63.11450, and the emission limits specified in § 63.11451.

(2) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(3) Approval of major alternatives to recordkeeping under § 63.10(f) and as defined in § 63.90.

§ 63.11461 [Reserved]

Tables to Subpart SSSSSS of Part 63

As required in § 63.11451, you must comply with each emission limit that applies to you according to the following table:

TABLE 1 TO SUBPART SSSSSS OF PART 63.—EMISSION LIMITS

For each . . .	You must meet the following emission limits . . .
1. New or existing glass melting furnace that produces glass at an annual rate of at least 45 Mg/yr (50 tpy) AND is charged with compounds of arsenic, cadmium, chromium, manganese, lead, or nickel as raw materials.	a. The 3-hour block average production-based PM mass emission rate must not exceed 0.2 pounds per ton (lb/ton) of glass produced; OR b. The 3-hour block average production-based metal HAP mass emission rate must not exceed 0.02 lb/ton of glass produced.

As stated in § 63.11458, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A), as shown in the following table:

TABLE 2 TO SUBPART SSSSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSSS

Citation	Subject
§ 63.1(a), (b), (c)(1), (c)(2), (c)(5), (e)	Applicability.
§ 63.2	Definitions.
§ 63.3	Units and Abbreviations.
§ 63.4	Prohibited Activities.
§ 63.5	Construction/Reconstruction.
§ 63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)–(j)	Compliance with Standards and Maintenance Requirements.
§ 63.7	Performance Testing Requirements.
§ 63.8(a)(1), (a)(2), (b), (c)(1)–(c)(4), (c)(7)(i)(B), (c)(7)(ii), (c)(8), (d), (e)(1), (e)(4), (f).	Monitoring Requirements.
§ 63.9(a), (b)(1)(i)–(b)(2)(v), (b)(5), (c), (d), (h)–(j)	Notification Requirements.
§ 63.10(a), (b)(1), (b)(2)(i)–(b)(2)(xii)	Recordkeeping and Reporting Requirements.
§ 63.10(b)(2)(xiv), (c), (f)	Documentation for Initial Notification and Notification of Compliance Status.
§ 63.12	State Authority and Delegations.
§ 63.13	Addresses.
§ 63.14	Incorporation by Reference.
§ 63.15	Availability of Information.
§ 63.16	Performance Track Provisions.

5. Part 63 is amended by adding subpart TTTTTT to read as follows:

Subpart TTTTTT—National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources

Applicability and Compliance Dates

Sec.
63.11462 Am I subject to this subpart?
63.11463 What parts of my plant does this subpart cover?
63.11464 What are my compliance dates?

Standards, Compliance, and Monitoring Requirements

63.11465 What are the standards for new and existing sources?
63.11466 What are the performance test requirements for new and existing sources?
63.11467 What are the initial compliance demonstration requirements for new and existing sources?
63.11468 What are the monitoring requirements for new and existing sources?
63.11469 What are the notification requirements?
63.11470 What are the recordkeeping requirements?

Other Requirements and Information

63.11471 What General Provisions apply to this subpart?
63.11472 What definitions apply to this subpart?
63.11473 Who implements and enforces this subpart?
63.11474 [Reserved]

Tables to Subpart TTTTTT of Part 63

Table 1 to Subpart TTTTTT of Part 63—Applicability of General Provisions to Subpart TTTTTT

Subpart TTTTTT—National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources

Applicability and Compliance Dates

§ 63.11462 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a secondary nonferrous metals processing facility (as defined in § 63.11472) that is an area source of hazardous air pollutant (HAP) emissions.

(b) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

§ 63.11463 What parts of my plant does this subpart cover?

(a) This subpart applies to any existing, new, or reconstructed affected source located at a secondary nonferrous metals processing facility.

(b) The affected source includes all crushing and screening operations at a secondary zinc processing facility and all furnace melting operations located at any secondary nonferrous metals processing facilities.

(c) An affected source is existing if you commenced construction or reconstruction of the affected source before September 20, 2007.

(d) An affected source is new if you commenced construction or reconstruction of the affected source on or after September 20, 2007.

§ 63.11464 What are my compliance dates?

(a) If you have an existing affected source, you must comply with the standards no later than the date of publication of the final rule in the **Federal Register**.

(b) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (b)(1) and (b)(2) of this section.

(1) If you start up your affected source on or before the date of publication of the final rule in the **Federal Register**, you must comply with this subpart no later than the date of publication of the final rule in the **Federal Register**.

(2) If you start up your affected source after the date of publication of the final rule in the **Federal Register**, you must comply with this subpart upon initial startup of your affected source.

Standards, Compliance, and Monitoring Requirements

§ 63.11465 What are the standards for new and existing sources?

(a) You must route the emissions from each existing affected source through a fabric filter or baghouse that achieves a PM control efficiency of at least 99.0 percent.

(b) You must route the emissions from each new affected source through a fabric filter or baghouse that achieves a PM control efficiency of at least 99.5 percent.

§ 63.11466 What are the performance test requirements for new and existing sources?

(a) Except as specified in paragraph (b) of this section, if you own or operate an existing or new affected source, you must conduct a performance test for each affected source within 180 days of your compliance date and report the results in your notification of compliance status.

(b) If you own or operate an existing affected source, you are not required to conduct a performance test if a prior performance test was conducted within the past 5 years of the compliance date using the same methods specified in paragraph (c) of this section and you meet either of the following two conditions:

(1) No process changes have been made since the test; or

(2) You demonstrate that the results of the performance test, with or without adjustments, reliably demonstrates compliance despite process changes.

(c) *Test methods.* You must conduct each performance test according to the requirements in § 63.7 and paragraphs (c)(1) and (2) of this section.

(1) Determine the concentration of PM according to the following test methods in 40 CFR part 60, appendices:

(i) Method 1 or 1A (Appendix A–1) to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G (Appendices A–1 and A–2) to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, 3B(Appendix A–2), or ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses (incorporated by reference—see § 63.14) to determine the dry molecular weight of the stack gas.

(iv) Method 4 (Appendix A–3) to determine the moisture content of the stack gas.

(v) Method 5 or 5D (Appendix A–3) to determine the concentration of particulate matter (front half filterable catch only). Three valid test runs are needed to comprise a performance test.

(2) During the test, you must operate each emissions source within ±10 percent of its normal process rate. You must monitor and record the process rate during the test.

§ 63.11467 What are the initial compliance demonstration requirements for new and existing sources?

(a) You must demonstrate initial compliance with the applicable standards in § 63.11465 by submitting a Notification of Compliance Status in accordance with § 63.11469(b).

(b) You must conduct the inspection specified in paragraph (c) of this section and include the results of the inspection in the Notification of Compliance Status.

(c) For each existing and new affected source, you must conduct an initial inspection of each baghouse. You must visually inspect the system ductwork and baghouse unit for leaks. Except as

specified in paragraph (e) of this section, you must also inspect the inside of each baghouse for structural integrity and fabric filter condition. You must record the results of the inspection and any maintenance action as required in § 63.11470.

(d) For each installed baghouse that is in operation during the 60 days after the applicable compliance date, you must conduct the inspection specified in paragraph (c) of this section no later than 60 days after your applicable compliance date. For an installed baghouse that is not in operation during the 60 days after the applicable compliance date, you must conduct an initial inspection prior to startup of the baghouse.

(e) An initial inspection of the internal components of a baghouse is not required if an inspection has been performed within the past 12 months.

(f) You must submit the Notification of Compliance Status within 120 calendar days after the applicable compliance date specified in § 63.11464.

§ 63.11468 What are the monitoring requirements for new and existing sources?

(a) For an existing affected source, you must demonstrate compliance by conducting the monitoring activities in paragraph (a)(1) or (a)(2) of this section:

(1) Periodic inspections/maintenance. You must perform periodic inspections and maintenance of each baghouse according to the requirements in paragraphs (a)(1)(i) and (ii) of this section.

(i) You must conduct weekly visual inspections of the system ductwork for leaks.

(ii) You must conduct inspections of the interior of the baghouse for structural integrity and to determine the condition of the fabric filter every 12 months.

(2) As an alternative to the monitoring requirements in paragraph (a)(1) of this section, you may demonstrate compliance by conducting a daily 30-minute visible emissions (VE) test (i.e., no visible emissions) using EPA Method 22 (40 CFR part 60, appendix A–7).

(b) If the results of the visual inspection or VE test conducted under paragraph (a) of this section indicate a problem with the operation of the baghouse, including but not limited to air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in PM emissions, you must take immediate corrective action to return the baghouse to normal operation according to the equipment manufacturer's specifications or instructions and record the corrective action taken.

(c) For each new affected source, you must install, operate, and maintain a bag leak detection system according to paragraphs (c)(1) through (3) of this section.

(1) Each bag leak detection system must meet the specifications and requirements in paragraphs (c)(1)(i) through (viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 1 milligram per dry standard cubic meter (0.00044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator shall continuously record the output from the bag leak detection system using electronic or other means (e.g., using a strip chart recorder or a data logger).

(iii) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (c)(1)(iv) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) In the initial adjustment of the bag leak detection system, you must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(v) Following initial adjustment, you shall not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided in paragraph (c)(1)(vi) of this section.

(vi) Once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (c)(2) of this section.

(vii) You must install the bag leak detection sensor downstream of the fabric filter.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) You must develop and submit to the Administrator or delegated authority for approval a site-specific monitoring plan for each bag leak detection system. You must operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (c)(2)(i) through (vi) of this section.

(i) Installation of the bag leak detection system;

(ii) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system, including quality assurance procedures;

(iv) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(v) How the bag leak detection system output will be recorded and stored; and

(vi) Corrective action procedures as specified in paragraph (c)(3) of this section. In approving the site-specific monitoring plan, the Administrator or delegated authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

(3) For each bag leak detection system, you must initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (c)(2)(vi) of this section, you must alleviate the cause of the alarm within 3 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(i) Inspecting the fabric filter for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in PM emissions;

(ii) Sealing off defective bags or filter media;

(iii) Replacing defective bags or filter media or otherwise repairing the control device;

(iv) Sealing off a defective fabric filter compartment;

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system; or

(vi) Shutting down the process producing the PM emissions.

§ 63.11469 What are the notification requirements?

(a) You must submit the Initial Notification required by § 63.9(a)(2) no later than 120 calendar days after the applicable compliance date specified in § 63.11464. The Initial Notification must

include the information specified in paragraphs (a)(1) through (3) of this section and may be combined with the Notification of Compliance Status required in § 63.11467 and paragraph (b) of this section.

(1) The name and address of the owner or operator;

(2) The address (i.e., physical location) of the affected source; and

(3) An identification of the relevant standard, or other requirement, that is the basis of the notification and source's compliance date.

(b) You must submit a Notification of Compliance Status required by § 63.9(h) no later than 120 days after the applicable compliance date specified in § 63.11464. In addition to the information required in § 63.9(h)(2)and § 63.11367, your notification must include the following certification(s) of compliance, as applicable, and signed by a responsible official:

(1) This certification of compliance by the owner or operator of an existing affected source who is relying on a previous performance test: ''This facility complies with the control efficiency requirement in § 63.11465 based on a previous performance test in accordance with § 63.11466.''

(2) This certification of compliance by the owner or operator of any new or existing affected source: ''This facility has conducted an initial inspection of each control device according to the requirements in § 63.11467, will conduct periodic inspections and maintenance of control devices in accordance with § 63.11468, and will maintain records of each inspection and maintenance action required by § 63.11470.''

(3) This certification of compliance by the owner or operator of a new affected source: ''This facility has an approved bag leak detection system monitoring plan in accordance with § 63.11468(c)(2).''

§ 63.11470 What are the recordkeeping requirements?

(a) You must keep the records specified in paragraphs (a)(1) and (2) of this section.

(1) As required in § 63.10(b)(2)(xiv), you must keep a copy of each notification that you submitted to comply with this subpart and all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted.

(2) You must keep the records of all inspection and monitoring data required by § 63.11467 and § 63.11468, and the information identified in paragraphs (a)(2)(i) through (a)(2)(v) for each required inspection or monitoring.

(i) The date, place, and time;

(ii) Person conducting the activity;

(iii) Technique or method used;

(iv) Operating conditions during the activity; and

(v) Results.

(b) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(c) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each recorded action.

(d) You must keep each record onsite for at least 2 years after the date of each recorded action according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.11471 What General Provisions apply to this subpart?

Table 1 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.16 apply to you.

§ 63.11472 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Bag leak detection system means a system that is capable of continuously monitoring relative particulate matter (dust loadings) in the exhaust of a baghouse to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

Furnace melting operation means the collection of processes used to charge post-consumer nonferrous scrap material to a furnace, melt the material, and transfer the molten material to a forming medium.

Secondary nonferrous metals processing facility means a brass and bronze ingot making, secondary magnesium processing, or secondary zinc processing plant that uses furnace melting operations to melt post-consumer nonferrous metal scrap to make products including bars, ingots, and blocks, or metal powders.

§ 63.11473 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the applicability requirements in § 63.11462 and 63.11463, the compliance date requirements in § 63.11464, and the applicable standards in § 63.11465.

(2) Approval of a major change to a test method under § 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

§ 63.11474 [Reserved]

Tables to Subpart TTTTTT of Part 63

As stated in § 63.11470, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

TABLE 1 TO SUBPART TTTTTT OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTTTT

Citation	Subject
63.1(a)(1)–(a)(4), (a)(6), (a)(10)–(a)(12), (b)(1), (b)(3), (c)(1)[1], (c)(2), (c)(5), (e).	Applicability.
63.2	Definitions.

TABLE 1 TO SUBPART TTTTTT OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTTTT—Continued

Citation	Subject
63.3	Units and Abbreviations.
63.4	Prohibited Activities and Circumvention.
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1), (f), (g), (i), (j)	Compliance with Standards and Maintenance Requirements.
63.8(a)(1), (a)(2), (b), (c)(1)(i)–(c)(1)(ii), (c)(2), (c)(3), (f)	Monitoring Requirements.
63.9(a), (b)(1), (b)(2), (b)(5), (c), (d), (h)(1)–(h)(3), (h)(5), (h)(6), (i), (j)	Notification Requirements.
63.10(a), (b)(1), (b)(2)(vii), (b)(2)(xiv), (b)(3), (c), (f)	Recordkeeping and Reporting Requirements.
63.12	State Authority and Delegations.
63.13	Addresses.
63.14	Incorporations by Reference.
63.15	Availability of Information and Confidentiality.
63.16	Performance Track Provisions.

[1] Section 63.11462(b) of this subpart exempts area sources from the obligation to obtain title V operating permits.

[FR Doc. E7–18344 Filed 9–19–07; 8:45 am]

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Federal Register

Thursday,
September 20, 2007

Part IV

Department of Housing and Urban Development

Federal Housing Administration (FHA) Single Family Mortgage Insurance: Announcement of Planned Implementation of Risk-Based Premiums; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5171–N–01]

Federal Housing Administration (FHA) Single Family Mortgage Insurance: Announcement of Planned Implementation of Risk-Based Premiums

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice applies to FHA single family mortgage insurance programs. This notice announces FHA's planned implementation of risk-based premiums, which are designed for mortgage lenders to offer borrowers an FHA-insured product that provides a range of mortgage insurance premium pricing, based on the risk the insurance contract represents.

DATES: *Comment Due Date:* October 22, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title.

Comment by Mail. Please note that due to security measures at all federal agencies, submission of comments by mail often results in delayed delivery.

Electronic Submission of Comments. HUD now accepts comments electronically, which interested persons may now submit through the Federal eRulemaking Portal at *http://www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available for public viewing. Commenters should follow the instructions provided at *http://www.regulations.gov* to submit comments electronically.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title.

Public Inspection of Public Comments. All comments and communications submitted will be available, without revision, for inspection and downloading at *http://www.regulations.gov*. Comments are also available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the Regulations Division. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the comments by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Margaret Burns, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Risk-Based Premiums

This notice announces HUD's plan to implement risk-based premiums for FHA loans for which case numbers have been assigned on or after January 1, 2008. Section 203(c)(2) of the National Housing Act (12 U.S.C. 1709(c)(2)) establishes mortgage insurance premiums for most FHA single family programs. Such upfront and annual insurance premiums are set at levels not to exceed 2.25 percent and 0.50 percent (0.55 percent for mortgages involving an original principal obligation that is greater than 95 percent of the appraised value of the property), respectively, with a discount available on the upfront premiums for mortgagors who are first-time homebuyers and who successfully complete pre-purchase homeownership counseling approved by the Secretary.

By offering a range of premiums based on risk, FHA will be able to offer options to mortgagees serving borrowers who were previously underserved, or not served, by the conventional marketplace. Alternatively, FHA will also be able to offer options to mortgagees serving those borrowers wishing to lower their premiums by, for example, increasing their downpayment or by improving their credit scores. A range of premiums based on risk will also ensure the future financial soundness of FHA programs that are obligations of the Mutual Mortgage Insurance Fund (MMIF). Under risk-based premiums, however, no qualified borrower will be charged by the mortgage lender in excess of the current statutory upfront and annual mortgage insurance premium limits. Additionally, this notice, when issued in final, will replace FHA's Mortgagee Letter 00–38, which identifies the current mortgage insurance premiums for FHA's single family programs.

Risk-based premiums will utilize the following schedule for upfront mortgage insurance premium rates:

FHA SINGLE FAMILY MORTGAGE INSURANCE UPFRONT MORTGAGE INSURANCE PREMIUMS—EFFECTIVE AS OF JANUARY 1, 2008

[All premiums are specified in basis points (0.01%)]

	Minimum Downpayment [a] (%)	Decision Credit Score						
		850–680	679–640	639–600	599–560	559–500	499–300	None
Funds from Borrower or a Relative	10	75	100	125	150	175	175	200
	5	100	125	150	175	200	.....	225
	3	125	150	175	200	225	.....	.....
Other Sources of Funds	3	175	200	[b] 225	.....	.....	.....	.....

a. Premiums are based on two categories of sources of funds: (1) The borrower's own funds or gifts from relatives and (2) any other acceptable source. See HUD Handbook 4155.1 for guidance on acceptable sources of funds.

b. A minimum decision credit score of 620 is required when downpayment funds come from a source other than the borrower or a relative of the borrower.

Notes:

1. Annual premium rates are: 50 basis points for loans with 5 and 10 percent downpayments; 55 basis points for loans with 3 percent downpayments; and 25 basis points for all loans with amortization terms of 15 years or less.

2. Downpayment percentage is determined by the base loan-to-value ratio (LTV). The ''base LTV'' is calculated by: (1) Dividing the base mortgage amount by the lesser of the sales price or appraised value of the property (for refinances, the base mortgage is divided by the appraised value of the property); (2) subtracting the result from 1 (one); and (3) multiplying by 100. ''Base mortgage amount'' is defined as the mortgage amount prior to adding any financed closing costs or upfront mortgage insurance.

3. Eligibility for the mortgage insurance premiums listed in the chart above is based on an applicant's decision credit score (FICO). A ''decision credit score'' is determined for each applicant according to the following guidelines: when three scores are available (one from each repository), the median (middle) value is used; when only two are available, the lesser of the two is chosen; when only one is available, then that score is used. If more than one individual is applying for the same mortgage, the lender should determine the decision credit score for each individual borrower and then average them to determine the final decision credit score for the application. That application ''decision'' credit score is then used to underwrite and determine if the mortgage is considered an acceptable risk.

4. Except as provided below, eligibility for these insurance premiums is dependent upon borrower acceptance by TOTAL (Technology Open to Approved Lenders). Therefore, all borrowers with valid credit scores must be scored by TOTAL.

5. Borrowers not scored by TOTAL or with insufficient trade lines to generate credit bureau scores are considered as ''none'' in the premium chart and are priced accordingly. Borrowers falling into cells with no premium price shown are not eligible for FHA-insured financing.

6. If TOTAL refers a loan for manual underwriting and the underwriter deems that there are sufficient compensating factors to create an acceptable risk to FHA, then the upfront insurance premium charge will be as shown on the premium chart.

7. These premiums apply to all purchase loans and to fully underwritten (non-streamline) refinance loans. Cash-out refinance loans must meet a minimum 5 percent equity requirement, based on the appraised value of the property.

8. Streamline refinance of an existing FHA loan for which a case number was assigned prior to January 1, 2008, will have an upfront premium of 100 basis points and an annual premium of 50 basis points.

9. First-time homebuyers who would otherwise pay an upfront premium of 225 basis points, but who complete pre-purchase homeownership counseling acceptable to the Secretary, will pay an upfront premium of no more than 200 basis points.

II. Solicitation of Public Comments

FHA welcomes comments on the risk-based premiums for a period of 30 days. The risk-based premiums are based on FHA insurance eligibility requirements as they exist at the time of publication of this notice. FHA's proposed rule on downpayment assistance, if issued in final, would affect the risk-based premiums proposal contained in this notice.

Any changes made to the risk-based premiums in response to public comment will be announced through publication of a subsequent notice in the **Federal Register**.

III. Findings and Certifications

Environmental Review

A Finding of No Significant Impact is not required for this notice. Under 24 CFR 50.19(b)(6), the subject matter of this notice is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*).

Dated: September 13, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 07–4651 Filed 9–17–07; 10:16 am]

BILLING CODE 4210–67–P

Federal Register

Thursday,
September 20, 2007

Part V

Department of Housing and Urban Development

24 CFR Parts 14, 15, et al.

HUD Office of Hearings and Appeals Conforming Amendments; and Technical Correction to Part 15 Regulations; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 14, 15, 17, 20, 24, 25, 26, and 180

[Docket No. FR–5137–F–01]

RIN 2501–AD32

HUD Office of Hearings and Appeals Conforming Amendments; and Technical Correction to Part 15 Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD's regulations to reflect the statutorily mandated termination of the HUD Board of Contract Appeals. As required by the National Defense Authorization Act for Fiscal Year 2006 (2006 NDA Act), the contract-related functions of the HUD Board of Contract Appeals have been transferred to the new Civilian Board of Contract Appeals. This final rule also describes the organization, address, and officer qualifications of the new Office of Hearings and Appeals (OHA) and its two divisions, which will carry out the nonprocurement functions performed by the former HUD Board of Contract Appeals. This rule also makes conforming changes to other HUD regulations to reflect this organizational change. Additionally, this rule makes a technical correction to HUD's Freedom of Information Act (FOIA) regulations to include reference to Regional Counsel, which was inadvertently omitted from a previously published rule.

DATES: *Effective Date:* October 22, 2007.

FOR FURTHER INFORMATION CONTACT: Questions regarding the establishment and organization of the OHA should be directed to David T. Anderson, Director, Office of Hearings and Appeals, Department of Housing and Urban Development, 1707 H Street, NW., Eleventh Floor, Washington, DC 20006; telephone number (202) 254–0000 (this is not a toll-free number). Questions regarding the technical correction to the part 15 regulations should be directed to Allen Villafuerte, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10258, Washington, DC 20410–0500; telephone number (202) 708–0300, extension 5095 (this is not a toll-free number). Hearing-or speech-impaired individuals may access these telephone numbers via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 847 of the 2006 NDA Act (Pub. L. 109–163, approved January 6, 2006) (41 U.S.C. 438) established the Civilian Board of Contract Appeals within the General Services Administration and gave it jurisdiction to decide contract disputes from several civilian agencies. The 2006 NDA Act simultaneously terminated the Boards of Contract Appeals of eight federal agencies, excepting the boards of contract appeals of the Department of Defense, the Tennessee Valley Authority, and the U.S. Postal Service. As a result, the affected eight federal agencies, including HUD, no longer have a board of contract appeals as part of their organizational structure.

Because of the transfer of contract appeals adjudicatory responsibilities under the 2006 NDA Act, and to provide the nonprocurement contract dispute functions performed by the former HUD Board of Contract Appeals, HUD has established within the Office of the Secretary a new OHA (71 FR 76679, December 21, 2006). The OHA consists of two separate divisions, the existing Office of Administrative Law Judges and the new Office of Appeals. The Office of Appeals includes Administrative Judges who perform certain nonprocurement contract appeals functions that were provided by the Administrative Judges of the former HUD Board of Contract Appeals.

II. Final Rule

This final rule revises the regulations in 24 CFR part 20, which governed the establishment and operation of the former HUD Board of Contract Appeals. Specifically, this rule describes the OHA's organization, address, and officer qualifications. This rule also makes conforming changes to regulations in parts 14, 17, 20, 24, 25, 26, and 180 that reference the former HUD Board of Contract Appeals. It also reflects the new address of the Office of Administrative Law Judges throughout HUD's regulations.

In addition, this rule makes a technical amendment to HUD's FOIA regulations in 24 CFR part 15. HUD published a final rule on February 26, 2007 (72 FR 8580) to clarify the types of requests for HUD documents and employee testimony covered by the Department's document production and testimony approval regulations. In HUD's amendments to § 15.203 in the February 26, 2007, final rule, HUD inadvertently omitted reference to Regional Counsel in § 15.203(b). Section 15.203(b) in the February 26, 2007, final rule largely mirrors § 15.203(a) of the part 15 regulations codified in the 2006 edition of title 24 of the Code of Federal Regulations. Section 15.203(a) of the 2006 codified regulations references Regional Counsel, and HUD intended to include the same reference in the new § 15.203(b) of the February 26, 2007, final rule. This rule provides for such inclusion.

III. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's regulations on rulemaking at 24 CFR part 10. Part 10, however, allows in § 10.1 for omission of notice and public comment in cases of statements of policy, interpretive rules, rules governing the Department's organization or internal practices, or if a statute expressly provides for omission of notice and public comment. In this case, public comment is unnecessary because the majority of this rule reflects the Department's organization resulting from the termination of the HUD Board of Contract Appeals, pursuant to the 2006 NDA Act. More specifically, this final rule removes regulations relating to the former HUD Board of Contract Appeals and describes the organization of the new OHA. It also reflects the reassignment of nonprocurement functions previously carried out by the former HUD Board of Contract Appeals elsewhere within the Department. Similarly, the correction to part 15 merely outlines the procedures used by the Department to be followed when a subpoena, order, or other demand of a court is issued to HUD for the disclosure of material or for the disclosure of information in its possession. This correction reflects current HUD practices. The amendment made by this part of this rule does not affect the rights or obligations of members of the public.

IV. Findings and Certifications

Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule does not establish special procedures that would need to be complied with by small entities. This rule does not change the procedures that all entities, small and large, must follow in the course of certain hearings and appellate review processes. Accordingly, the undersigned certifies that this final rule would not

have a significant economic impact on a substantial number of small entities.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, nor does it establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications, if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

List of Subjects

24 CFR Part 14

Claims, Equal access to justice, Lawyers, Reporting and recordkeeping requirements.

24 CFR Part 15

Classified information, Courts, Freedom of information, Government employees, Reporting and recordkeeping requirements.

24 CFR Part 17

Administrative practice and procedure, Claims, Government employees, Income taxes, Wages.

24 CFR Part 20

Administrative practice and procedure, Government contracts, Organization and functions (Government agencies).

24 CFR Part 24

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

24 CFR Part 25

Administrative practice and procedure, Loan programs—housing and community development, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

24 CFR Part 26

Administrative practice and procedure.

24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Individuals with disabilities, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 14, 15, 17, 20, 24, 25, 26, and 180, as follows:

PART 14—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN ADMINISTRATIVE PROCEEDINGS

■ 1. The authority citation for part 14 is revised to read as follows:

Authority: 5 U.S.C. 504(c)(1); 42 U.S.C. 3535(d).

§ 14.50 [Amended]

■ 2. In 24 CFR 14.50, in the definition of *Adjudicative officer*, remove the words ''Board of Contract Appeals'' and add, in their place, the words ''Office of Appeals''.

PART 15—PUBLIC ACCESS TO HUD RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND TESTIMONY AND PRODUCTION OF INFORMATION BY HUD EMPLOYEES

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

Authority: 42 U.S.C. 3535(d).

■ 4. Revise paragraph (b) of § 15.203 to read as follows:

§ 15.203 Making a demand for production of material or provision of testimony.

* * * * *

(b) Whenever a demand is made upon the Department or an employee of the Department for the production of material or provision of testimony, the employee shall immediately notify the Associate General Counsel for Litigation, or the appropriate Regional Counsel, or other designee. The appropriate Regional Counsel shall mean the Regional Counsel for the Regional Office having delegated authority over the project or activity with respect to which the information is sought. The Associate General Counsel for Litigation, the appropriate Regional Counsel, or other designee shall maintain a record of all demands served upon the Department and refer the demand to the appropriate designee for processing and determination.

PART 17—ADMINISTRATIVE CLAIMS

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

Authority: 5 U.S.C. 5514, 28 U.S.C. 2672; 31 U.S.C. 3711, 3716–18, 3721; and 42 U.S.C. 3535(d).

■ 6. The authority citation for subpart C continues to read as follows:

Authority: 5 U.S.C. 5514; 31 U.S.C. 3701, 3711, 3716–3720E; and 42 U.S.C. 3535(d).

■ 7. Revise § 17.140 to read as follows:

§ 17.140 Miscellaneous provisions: correspondence with the Department.

The employee shall file an original and one copy of a request for a hearing with the Clerk, Office of the Chief Administrative Law Judge, 1707 H Street, NW., Eleventh Floor, Washington, DC 20006, on official work days between the hours of 8:45 a.m. and 5:15 p.m. All other correspondence shall be submitted to the Department Claims Officer, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Documents may be filed by personal delivery or mail. All documents shall be printed, typewritten, or otherwise processed in clear, legible form and on letter-size paper.

■ 8. Revise § 17.152 to read as follows:

§ 17.152 Review within the Department of a determination that an amount is past-due and legally enforceable.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past-due or not legally enforceable. The debtor should send a copy of the Notice of Intent with a letter notifying the Office of Appeals within 25 calendar days from the date of the Department's Notice of Intent that he or she intends to present evidence. (See

§ 17.161(a) for address of the Office of Appeals.) Failure to give this advance notice will not jeopardize the debtor's right to present evidence within the 65 days provided for in paragraph (b) of this section. If the Office of Appeals has additional procedures governing the review process, a copy of the procedures will be mailed to the debtor after his request for review is received and docketed by the Office of Appeals.

(b) *Submission of evidence.* The debtor may submit evidence showing that all or part of the debt is not past-due or not legally enforceable, along with the notification requested by paragraph (a) of this section, but in any event the evidence must be submitted to the Office of Appeals within 65 calendar days from the date of the Department's Notice of Intent. Failure to submit evidence within 65 calendar days will result in a dismissal of the request for review by the Office of Appeals.

(c) *Review of the record.* After a timely submission of evidence by the debtor, an Administrative Judge from the Office of Appeals will review the evidence submitted by the Department that shows that all or part of the debt is past-due and legally enforceable. (Administrative Judges are appointed in accordance with 41 U.S.C. 607(b)(1).) The Administrative Judge shall make a determination based upon a review of the written record, except that the Administrative Judge may order an oral hearing if he or she finds that:

(1) An applicable statute authorizes or requires the Secretary to consider waiver of the indebtedness and the waiver determination turns on credibility or veracity; or

(2) The question of indebtedness cannot be resolved by review of the documentary evidence.

(d) *Previous decision by the Office of Appeals.* The debtor is not entitled to a review of the Department's intent to offset it if, in a previous year, the Office of Appeals has issued a decision on the merits that the debt is past-due and legally enforceable, *except* when the debt has become legally unenforceable since the issuance of that decision or when the debtor can submit newly discovered material evidence that the debt is presently not legally enforceable.

■ 9. Revise § 17.161(a) to read as follows:

§ 17.161 Correspondence with the Department.

(a) All correspondence from the debtor to the Office of Appeals concerning the right to review as described in § 17.152 shall be addressed to the HUD Office of Appeals, 1707 H Street, NW, Eleventh Floor, Washington, DC 20006.

* * * * *

■ 10. Revise § 17.170(b) to read as follows:

* * * * *

(b) *Hearing official.* Any hearing required to establish the Secretary's right to collect a debt through administrative wage garnishment shall be conducted by an Administrative Judge of the Office of Appeals.

■ 11. Revise part 20 to read as follows:

PART 20—OFFICE OF HEARINGS AND APPEALS

Sec.
20.1 Establishment of the Office of Hearings and Appeals.
20.3 Location, organization, and officer qualifications.
20.5 Jurisdiction of Office of Appeals.

Authority: 42 U.S.C. 3535(d).

§ 20.1 Establishment of the Office of Hearings and Appeals.

There is established in the Office of the Secretary the Office of Hearings and Appeals.

§ 20.3 Location, organization, and officer qualifications.

(a) *Location.* The Office of Hearings and Appeals is located at 1707 H Street, NW, Eleventh Floor, Washington, DC 20006. The telephone number of the Office of Hearings and Appeals is (202) 254–0000. Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. The facsimile number is (202) 254–0011.

(b) *Organization.* The Office of Hearings and Appeals consists of two divisions: the Office of Administrative Law Judges and the Office of Appeals. Its administrative activities are supervised by the Director of the Office of Hearings and Appeals.

(c) *Officer qualifications.* The Director, Administrative Judges, and Administrative Law Judges of the Office of Hearings and Appeals shall be attorneys at law duly licensed by any state, commonwealth, territory, or the District of Columbia.

§ 20.5 Jurisdiction of Office of Appeals.

The Office of Appeals shall, consistent with statute and regulation, have jurisdiction over matters assigned to it by the Secretary or designee. Determinations shall have the finality provided by the applicable statute, regulation, or agreement.

PART 24—GOVERNMENT DEBARMENT AND SUSPENSION (NONPROCUREMENT)

■ 12. The authority citation for part 24 continues to read as follows:

Authority: 41 U.S.C. 701 *et seq.*; 42 U.S.C. 3535(d); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

§ 24.947 [Amended]

■ 13. In 24 CFR 24.947, remove the words ''Board of Contract Appeals'' and add, in their place, the words ''Office of Appeals''.

PART 25—MORTGAGEE REVIEW BOARD

■ 14. The authority citation for 24 CFR part 25 continues to read as follows:

Authority: 12 U.S.C. 1708(c), 1708(d), 1709(s), 1715b, and 1735f–14; 42 U.S.C. 3535(d).

■ 15. In § 25.3, revise the definition of Hearing officer to read as follows:

§ 25.3 Definitions.

* * * * *

Hearing officer. An Administrative Law Judge authorized by the Secretary, or by the Secretary's designee, to issue findings of fact or other appropriate findings under § 25.8(d)(2).

* * * * *

PART 26—HEARING PROCEDURES

■ 16. The authority citation for part 26 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

§ 26.2 [Amended]

■ 17. In 24 CFR 26.2(a), remove the words ''Board of Contract Appeals'' and add, in their place, the words ''Office of Appeals''.

■ 18. In § 26.28, revise the definition of Chief Docket Clerk to read as follows:

§ 26.28 Definitions.

* * * * *

Chief Docket Clerk means the Chief Docket Clerk of the Office of Administrative Law Judges at the following address: 1707 H Street, NW., Eleventh Floor, Washington, DC 20006.

* * * * *

PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

■ 19. The authority citation for part 180 continues to read as follows:

Authority: 29 U.S.C. 794; 42 U.S.C. 2000d–1 3535(d), 3601–3619; 5301–5320, and 6103.

■ 20. In § 180.100(c), revise the definition of Chief Docket Clerk to read as follows:

§ 180.100 Definitions.

* * * * *

(c) * * *

Chief Docket Clerk is the docket clerk for HUD's Office of Administrative Law Judges, 1707 H Street, NW., Eleventh Floor, Washington, DC 20006. The telephone number is (202) 254–0000 and the facsimile number is (202) 254–0011.

* * * * *

Dated: August 13, 2007.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E7–18522 Filed 9–19–07; 8:45 am]

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Federal Register

Thursday,
September 20, 2007

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AV12

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service or we) prescribes final late-season frameworks from which States may select season dates, limits, and other options for the 2007–08 migratory bird hunting seasons. These late seasons include most waterfowl seasons, the earliest of which commences on September 22, 2007. The effect of this final rule is to facilitate the States'(selection of hunting seasons and to further the annual establishment of the late-season migratory bird hunting regulations.

DATES: This rule takes effect on September 20, 2007.

ADDRESSES: States should send their season selections to: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. You may inspect comments during normal business hours at our office in room 4107, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2007

On April 11, 2007, we published in the **Federal Register** (72 FR 18328) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, proposed regulatory alternatives for the 2007–08 duck hunting season, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2007–08 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the April 11 proposed rule.

On June 8, 2007, we published in the **Federal Register** (72 FR 31789) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations and the regulatory alternatives for the 2007–08 duck hunting season. The June 8 supplement also provided detailed information on the 2007–08 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 20 and 21, we held open meetings with the Flyway Council Consultants, at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2007–08 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2007–08 regular waterfowl seasons. On July 23, 2007, we published in the **Federal Register** (72 FR 40194) a third document specifically dealing with the proposed frameworks for early-season regulations. In the August 28, 2007, **Federal Register** (72 FR 49622), we published final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected 2007–08 early-season hunting dates, hours, areas, and limits. On August 30, 2007, we published a final rule in the **Federal Register** (72 FR 50164) amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

On August 1–2, 2007, we held open meetings with the Flyway Council Consultants, at which the participants reviewed the status of waterfowl and developed recommendations for the 2007–08 regulations for these species. On August 31, 2007, we published in the **Federal Register** (72 FR 50613) the proposed frameworks for the 2007–08 late-season migratory bird hunting regulations. This document establishes final frameworks for late-season migratory bird hunting regulations for the 2007–08 season. We will publish State selections in the **Federal Register** as amendments to §§ 20.101 through 20.107, and 20.109 of title 50 CFR part 20.

Population Status and Harvest

A brief summary of information on the status and harvest of waterfowl excerpted from various reports was included in the August 31 supplemental proposed rule. For more detailed information on methodologies and results, complete copies of the various reports are available at the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/reports.html.*

Review of Public Comments and Flyway Council Recommendations

The preliminary proposed rulemaking, which appeared in the April 11, 2007, **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 8, 2007, **Federal Register**, discussed the regulatory alternatives for the 2007–08 duck hunting season. Late-season comments are summarized below and numbered in the order used in the April 11 **Federal Register**. We have included only the numbered items pertaining to late-season issues for which we received written comments. Consequently, the issues do not follow in direct numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

General

Written Comments: An individual commenter protested the entire migratory bird hunting regulations process, the killing of all migratory birds, and the Flyway Council process.

Service Response: Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Having taken into account the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds, we believe that the hunting seasons provided herein are compatible with the current status of migratory bird populations and long-term population goals. Additionally, we are obligated to, and do, give serious consideration to all information received as public

comment. While there are problems inherent with any type of representative management of public-trust resources, we believe that the Flyway-Council system of migratory bird management has been a longstanding example of State-Federal cooperative management since its establishment in 1952. However, as always, we continue to seek new ways to streamline and improve the process.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing recommendations are discussed below.

A. Harvest Strategy Considerations

Council Recommendations: The Atlantic and Pacific Flyway Councils and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended the adoption of the ''liberal'' regulatory alternative.

The Central Flyway Council also recommended the ''liberal'' alternative. However, as part of their Hunter's Choice experiment, they recommended continuation of the following bag limits:

In Colorado, Montana, Nebraska, New Mexico, and Oklahoma, the daily bag limit would be six ducks, with species and sex restrictions as follows: Five mallards (no more than two of which may be females), two redheads, two scaup, two wood ducks, one pintail, one mottled duck, and one canvasback. For pintails and canvasbacks, the season length would be 39 days, which may be split according to applicable zones/split duck hunting configurations approved for each State.

In Kansas, North Dakota, South Dakota, Texas, and Wyoming, the daily bag limit would be five ducks, with species and sex restrictions as follows: Two scaup, two redheads, and two wood ducks, and only one from the following group—hen mallards, mottled ducks, pintails, canvasbacks.

Service Response: As we stated in the July 23 and August 31 proposed rules, we are continuing development of an Adaptive Harvest Management (AHM) protocol that would allow hunting regulations to vary among Flyways in a manner that recognizes each Flyway's unique breeding-ground derivation of mallards. Until such time, however, for the 2007 hunting season, we believe that the prescribed regulatory choice for the Mississippi, Central, and Pacific Flyways should continue to depend on the status of midcontinent mallards and that the regulatory choice for the Atlantic Flyway should continue to depend on the status of eastern mallards. Investigations of the dynamics of western mallards (and their potential effect on regulations in the West) are continuing; therefore we are not yet prepared to recommend an AHM protocol for this mallard stock.

For the 2007 hunting season, we considered the same regulatory alternatives as those used last year. The nature of the restrictive, moderate, and liberal alternatives has remained essentially unchanged since 1997, except that extended framework dates have been offered in the moderate and liberal regulatory alternatives since 2002. Also, we agreed in 2003 to place a constraint on closed seasons in the western three Flyways whenever the midcontinent mallard breeding-population size (traditional survey area plus Minnesota, Michigan, and Wisconsin) is ≥5.5 million.

Optimal AHM strategies for the 2007 hunting season were calculated using: (1) Harvest-management objectives specific to each mallard stock; (2) the 2007 regulatory alternatives; and (3) current population models and associated weights for midcontinent and eastern mallards. Based on this year's survey results of 9.05 million midcontinent mallards (traditional survey area plus MN, WI, and MI), 5.04 million ponds in Prairie Canada, and 906,900 eastern mallards, we believe the appropriate regulatory choice for all four Flyways is the ''liberal'' alternative.

Therefore, we concur with the recommendations of the Atlantic, Mississippi, Central, and Pacific Flyway Councils regarding selection of the ''liberal'' regulatory alternative and will adopt the ''liberal'' regulatory alternative, as described in the June 8 **Federal Register**.

Regarding Hunter's Choice, we support the Central Flyway's continuation of a 3-year evaluation of the Hunter's Choice duck bag limit. The Central Flyway's Hunter's Choice regulations are intended to limit harvest on pintails and canvasbacks in a manner similar to the season-within-a-season regulations. Hunter's Choice regulations should also reduce harvests of mottled ducks and hen mallards, while maintaining full hunting opportunity on abundant species such as drake mallards. For the species included in the aggregate bag limit, the harvest of one species is intended to ''buffer'' the harvest of the others, thus reducing the harvest of all species included in the one-bird category. The Central Flyway has accumulated 4 years of baseline information on harvests resulting from ''season-within-a-season'' regulations in the Central Flyway; the season length for pintails and canvasbacks in season-within-a-season States under the ''liberal'' alternative will be 39 days.

Five States (Kansas, North Dakota, South Dakota, Texas, and Wyoming) were randomly assigned to Hunter's Choice regulations and the remaining five States (Colorado, Montana, Nebraska, New Mexico, and Oklahoma) serve as controls (season-within-a-season regulations) as the evaluation proceeds. The overall duck daily bag limit is reduced from six to five for the Hunter's Choice States.

While we continue to support the Central Flyway's Hunter's Choice experiment, we reiterate that we believe implementation of this experiment should not preclude any future changes in hunting regulations that may be deemed necessary on an annual basis for any other duck species in the Central Flyway, if such changes are deemed necessary.

D. Special Seasons/Species Management

iii. Black Ducks

Council Recommendations: The Atlantic Flyway Council and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended that black duck harvest regulations remain unchanged for the 2007–08 season.

Service Response: For the 2007–08 hunting season, we support the Flyway Councils' recommendations for no change in hunting regulations for black ducks. However, we are disappointed that progress towards development of an international harvest strategy stalled during recent discussions with the Atlantic and Mississippi Flyways. It is our understanding that a number of key points were debated, but consensus could not be reached on two major issues: A suitable harvest rate objective and equitable allocation of the harvest between Canada and the United States. It remains our objective to reach final agreement on the international harvest strategy in time to inform decisions for the 2008–09 regulatory cycle. To do so, we will provide a facilitated forum, involving representatives from the Service, the Canadian Wildlife Service, and the Atlantic and Mississippi Flyways, to reach consensus on the parity issue and any other remaining issues that currently stand in the way of completing and implementing this revised approach to black duck harvest management. Failure to reach agreement in time for next year's regulations development cycle will result in our use of the best available information to recommend regulations necessary to

bring harvests in line with the black duck harvest potential.

iv. Canvasbacks

Council Recommendations: The Atlantic and Pacific Flyway Councils and the Lower-Region Regulations Committees of the Mississippi Flyway Council recommended a full season for canvasbacks consisting of a 2-bird daily bag limit and a 60-day season in the Atlantic and Mississippi Flyways, and 107-day season in the Pacific Flyway.

The Central Flyway Council, as part of their Hunter's Choice experiment, recommended a full season (74 days) for canvasbacks with a 1-bird daily bag limit in Kansas, North Dakota, South Dakota, Texas, and Wyoming and a 39-day season with a 1-bird daily bag limit in Colorado, Montana, Nebraska, New Mexico, and Oklahoma.

Service Response: Since 1994, we have followed a canvasback harvest strategy that if canvasback population status and production are sufficient to permit a harvest of one canvasback per day nationwide for the entire length of the regular duck season, while still attaining a projected spring population objective of 500,000 birds, the season on canvasbacks should be opened. A partial season would be permitted if the estimated allowable harvest was within the projected harvest for a shortened season. If neither of these conditions can be met, the harvest strategy calls for a closed season on canvasbacks nationwide.

This year's spring survey resulted in a record high estimate of 865,000 canvasbacks. This was 25 percent above the 2006 estimate of 691,000 canvasbacks and 53 percent above the 1955–2006 average. The estimate of ponds in Prairie Canada was 5.04 million, which was 13 percent above last year and 49 percent above the long-term average. The size of the spring population, together with above-average expected production due to the good habitat conditions, results in an allowable harvest in the United States of 467,900 birds for the 2007–08 season. The expected canvasback harvest with a 1-bird daily bag limit for the entire season is expected to be about 120,000 birds. Available data indicates that adding a second canvasback to the daily bag limit is expected to increase harvest about 25 percent, or to approximately 150,000 birds in the United States. The current harvest strategy has no provisions for daily bag limits greater than one bird. However, with the record high breeding population recorded this spring and the expected good recruitment, the strategy would project population growth even with a 2-bird daily bag limit. Therefore, we are in support of the Atlantic, Mississippi, and Pacific Flyway Councils' recommendations to increase the daily bag limit for canvasbacks to two birds for the 2007–08 season. We also support the Central Flyway Council's recommendation to leave canvasback limits unchanged in the Central Flyway to allow continuation of the Hunter's Choice experiment in that Flyway.

We continue to support the canvasback harvest strategy and the model adopted in 1994. However, this strategy was developed primarily due to concerns about low population levels, and as such, did not address circumstances encountered this year of record high abundance and the potential for increased daily bag limits. We believe there is reasonable opportunity to allow a limited increase in the daily bag limit this year without compromising the population(s ability to sustain a breeding population in excess of 500,000 canvasbacks next spring.

We note, however, that departures from existing harvest strategies are not actions that we generally condone, nor will we make an exception to the canvasback strategy next year, even if similar circumstances exist, without an explicit modification to the existing strategy allowing for daily bag limits greater than one bird. Over the next year, we are willing to discuss the possibility of revising the strategy with the Flyway Councils and other interested parties. Because the population model has performed relatively well to date, we believe that the most productive area for discussion involves examination of the harvest management objectives of this strategy, with an emphasis on allowing bag limits greater than one bird. We believe that such a revision should carefully consider the potential ramifications of such changes on the expected frequency of closed and partial seasons for this species in the future.

Due to the relative lateness of this development, the generally earlier opening of duck seasons in Alaska (September 1), and the anticipated level of harvest in Alaska, we will exclude Alaska from the increase in the daily bag limit this year, as was recommended by the Pacific Flyway Council, with the State of Alaska's concurrence. However, we believe that Alaska should fully engage in review of population objectives and remain a part of the overall harvest strategy for this species. Additionally, explicit provisions for Alaska should be considered in any proposed modifications to the strategy that might be forthcoming from the Flyways for the next regulatory cycle.

v. Pintails

Council Recommendations: The Atlantic and Pacific Flyway Councils and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended a full season for pintails consisting of a 1-bird daily bag limit and a 60-day season in the Atlantic and Mississippi Flyways, and a 107-day season in the Pacific Flyway.

The Central Flyway Council, as part of their Hunter's Choice experiment, recommended a full season (74 days) for pintails with a 1-bird daily bag limit in Kansas, North Dakota, South Dakota, Texas, and Wyoming and a 39-day season with a 1-bird daily bag limit in Colorado, Montana, Nebraska, New Mexico, and Oklahoma.

Service Response: In the July 23 **Federal Register**, we approved the incorporation of a compensatory harvest mortality model into the decision-making framework used in the pintail harvest strategy. Within that framework, the compensatory model serves as an alternative hypothesis regarding the effect of harvest mortality on population growth. The two alternative models have been assigned weights based on their respective abilities to predict historic pintail breeding populations. These weights, representing the current strength of evidence favoring each model, determine the influence each model has on the annual regulatory choice for pintails. A document describing the current pintail harvest strategy with these technical improvements is posted on the Service's webpage (*http://www.fws.gov/migratorybirds/reports/reports.html*).

Based on this revised strategy, along with an observed spring breeding population of 3.34 million, an overflight-bias-corrected breeding population of 4.34 million and a projected fall flight of 5.29 million pintails, the Pintail Harvest Strategy prescribes a full season and a 1-bird daily bag limit in all Flyways. Under the ''liberal'' season length, this regulation is expected to result in a harvest of 569,000 pintails and an observed breeding population estimate of 3.24 million in 2008, not considering any potential effect from continuation of the Hunter's Choice evaluation in the Central Flyway.

Furthermore, we agree with the Central Flyway Council's recommendation to adopt a 39-day ''season-within-a-season'' for pintails in Colorado, Montana, Nebraska, New Mexico, and Oklahoma. We understand

that this departure from the pintail strategy is a necessary part of the experimental Hunter's Choice season.

vi. Scaup

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended no changes in scaup harvest regulations for 2007. All the Flyway Councils reiterated their support for the cooperative development of a comprehensive scaup harvest management strategy.

Service Response: The continental scaup (greater *Aythya marila* and lesser *Aythya affinis* combined) population has experienced a long-term decline over the past 20 years. Over the past several years in particular, we have continued to express our growing concern about the status of scaup. The 2007 breeding population estimate for scaup is 3.45 million, essentially unchanged from the 2006 estimate, and the third lowest estimate on record.

Last year, we stated that we did not change scaup harvest regulations with the firm understanding that a draft harvest strategy would be available for Flyway Council review prior to the winter meetings (71 FR 55654, September 22, 2006) and be in place to guide development of scaup hunting regulations in 2007. As part of this effort, we developed an assessment framework that uses available data to help predict the effects of harvest and other uncontrollable environmental factors on the scaup population. After extensive review that we believe resulted in substantial improvements, the final technical assessment was presented during the Winter Flyway Technical Section meetings and made available for public review in the April 11 **Federal Register**. We stated then, and continue to believe, that this technical assessment represents an objective and comprehensive synthesis of data relevant to scaup harvest management and can help frame a scientifically-sound scaup harvest strategy. We note that results of the assessment suggest that a reduction in scaup harvest is commensurate with the current population status of scaup. Based on this technical assessment, a proposed scaup harvest strategy was made available for public review in the June 8 **Federal Register**. The proposed harvest strategy included initial Service recommendations on a harvest management objective and proposed Flyway-specific harvest allocations, as well as an additional analysis that predicted scaup harvest from various combinations of Flyway-specific season lengths and bag limits (*http://www.fws.gov/migratorybirds/reports/reports.html*). A number of concerns about the proposed strategy were raised by the Flyway Councils and States.

In the July 23 **Federal Register**, we addressed these concerns and stated that while we continue to support the technical assessment of scaup harvest potential, we were sensitive to the concerns expressed by the Flyway Councils about the policy and social aspects of implementation of the proposed strategy at this time. More specifically, we agreed that more dialogue about the nature of harvest management objectives and regulatory alternatives was necessary for successful implementation of the strategy. Failure to agree on crucial policy aspects of the proposed strategy in a timely fashion increases the risk that more drastic regulatory measures may be necessary in the future, and having considered all of these concerns, we agreed that another year is needed to develop consensus on a harvest strategy for scaup. We believe that one year is sufficient time to resolve all outstanding issues and it is our intent to implement a strategy in 2008. However, we further stated that our decision did not preclude the possibility that we would consider possible changes to scaup harvest regulations for the 2007–08 hunting season, based on population status.

We remain disappointed that collectively we have not made the progress anticipated in the development of a viable strategy to manage harvest that acknowledges the uncertainty about what factors are really influencing scaup numbers, but at the same time provides guidance on what changes in regulations are still appropriate. Although we remain very concerned about the continued decline in scaup numbers and other evidence that this species is not doing well, we are not changing scaup regulations for the 2007–08 hunting season. Our decision is based on several important factors. First, we believe that the hunting seasons provided herein are compatible with the current status of scaup. Second, we have a firm understanding that a harvest strategy will be available for 2008–09 and that outstanding policy issues will be resolved and incorporated into a final strategy in time for adoption in June 2008. And lastly, we believe that this additional year of harvest strategy development will not compromise our long term goals for scaup. We will work with the Flyway Councils to resolve outstanding issues and to continue ongoing cooperative efforts to improve the monitoring programs and databases upon which scaup regulatory decisions are based. These include: Evaluation of potential biases in population estimates, expansion and improvement of population surveys, and a feasibility assessment of a broad-scale scaup banding program. Additionally, we will continue retrospective analyses of existing databases to assist in the identification of causal factors which might explain the continued scaup decline.

In preparation for that dialogue, we reiterate our longstanding objections to State-specific regulations and encourage the Flyway Councils to focus efforts on achieving consensus around Flyway-wide regulatory alternatives. Secondly, we recognize that additional effort is necessary over the coming year to communicate the rationale for a scaup strategy and possible regulatory changes to the Flyways and the public. We intend to review progress on policy issues at the winter 2008 SRC meeting and anticipate significant progress by that time.

vii. Mottled Ducks

While we are not implementing any changes in mottled duck hunting regulations at this time, we remain concerned about mottled duck status, especially those in the Western Gulf Coast region of Louisiana and Texas. However, we commend the progress made on the management of mottled ducks over the past year-and-a-half, including the identification of two management populations and work on range-wide breeding surveys in Florida and the Western Gulf Coast. We are committed to managing the Western Gulf Coast as a single stock of birds, and acknowledge the challenges that are associated with a population boundary that includes more than one Flyway. We request that both the Central and Mississippi Flyways work together to consider how a reduction in harvest, by as much as 30 percent if necessary, can be achieved with regulatory changes. We are confident that the Flyways will be able to adequately address harvest management of mottled ducks as a single Western Gulf Coast population unit, and we look forward to considering a coordinated proposal during the 2008–09 regulatory cycle. During the coming year, we will continue to explore methods to assess mottled duck population status and refine our understanding of population and harvest dynamics.

Further, we recognize that the mottled duck is an integral part of the Central Flyway's Hunter's Choice bag-limit experiment, and we support continued

inclusion of the mottled duck among those species with a bag-limit restriction in the experiment as requested by the Central Flyway Council. However, we reiterate that if it is determined that further reductions in harvest, or a different approach to harvest reduction, are warranted at any time over the course of the Hunter's Choice experiment, we will make those necessary changes. Thus, the continued implementation of this experiment will not preclude any future changes in hunting regulations that may be deemed necessary on an annual basis for mottled ducks.

viii. Youth Hunt

Council Recommendations: The Atlantic Flyway Council recommended that tundra swans be added to the list of eligible species legal to hunt during special youth waterfowl hunts and that we allow the take of tundra swans during the special youth waterfowl hunt day(s) to those individuals holding a valid permit/tag. Further, the Council recommended that this proposed take occur regardless of whether the youth hunt day(s) are inside or outside the current tundra swan hunting framework.

Service Response: Currently, tundra swans may be taken by individuals holding a valid permit/tag at any time during the open season without any additional provisions. Since tundra swan harvests are tightly controlled in each State where a limited number of permits are issued, we see no reason not to allow youth to harvest a tundra swan, as they will still have to possess a valid tag that is issued by random draw prior to the hunting season. Further, we note that the revised (2007) Eastern Population Tundra Swan Management plan advocates the issuance of tundra swan hunt permits during youth waterfowl days, regardless of whether these youth waterfowl hunting days are inside or outside the current framework. Thus, we approve the addition of tundra swans to the list of eligible species for youth swan hunts and allowing the take of tundra swans inside or outside the tundra swan hunting frameworks.

4. Canada Geese

B. Regular Seasons

Council Recommendations: The Atlantic Flyway Council forwarded a number of recommendations concerning Canada geese. First, the Council recommended the approval of a minor change in the delineation of High and Low North Atlantic Population (NAP) harvest zones in New York. They further recommended that Connecticut's NAP zones be adjusted to account for the current harvest distribution of NAP and resident Canada geese and to simplify zone boundaries. In Resident Population (RP) areas, the Council recommended the allowance of an 80-day Canada goose hunting season, with a 5-bird daily bag limit, and a 3-way split. In the RP harvest area of New York, they further recommend that the framework closing date be extended to March 10, beginning this fall. They recommended reclassifying a small portion of the Northeast Goose Hunt Zone in Northampton County, North Carolina, to a Southern James Bay Population (SJBP) Hunt Zone designation. Lastly, they recommended that the SJBP Canada goose harvest strategy be revised in the SJBP Management Plan before changes to the SJBP harvest areas or season liberalization are considered in both Flyways.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended a number of changes in Canada goose zones, seasons lengths, and bag limits for several States in the Flyway. These changes are an outgrowth of the evolution of Canada goose harvest management philosophy in the Flyway. The change in philosophy in the Flyway is driven by the increasing numbers of giant Canada geese and the diminishing importance of interior Canada geese to goose harvest opportunities in the Flyway. The large numbers of giant Canada geese in most States appear to be buffering, to some extent, hunting pressure on interior Canada geese. These changes will allow States to evaluate the potential of this buffering effect as well as the impacts of stable regulations on interior Canada goose populations.

The Central Flyway Council recommended several changes for dark goose regulations. In the West Tier, they recommended an increase in season length (from 95 to 107 days) in Colorado and an increase in bag limit (from 3 to 4) in Colorado and Texas. In the East Tier, they recommended removing the Big Stone Power Plant area restriction in South Dakota.

The Pacific Flyway Council recommended the following area, bag, and season length changes described below:

1. Increase the bag limit to 6 geese per day in the California Northeastern and Balance-of-State Zones;

2. Increase the daily bag limit for small Canada geese in the California Balance-of-State Zone to 6 geese per day;

3. Eliminate the closed zone of Tillamook County, Oregon, include the county in the NW Oregon Permit Goose Zone, and establish a daily bag limit of dark geese of 3 including not more than 2 cackling or Aleutian geese; and

4. Revise Idaho zone designations for 4 counties, to move all parts of Power County from Zone 3 to Zone 5 and move Blaine and Camas Counties and Cassia County within Minidoka National Wildlife Refuge from Zone 3 to Zone 4.

Service Response: We concur with the Atlantic Flyway Council's recommendations to adjust delineation of High and Low NAP harvest zones in New York and Connecticut to account for the current harvest distribution of NAP. The Atlantic Flyway Management Plan for NAP Canada geese allows for a two-tiered approach to harvest management for this population. ''High Harvest'' zones are defined as those areas within each State containing 70% or more of all NAP leg band recoveries, whereas ''Low Harvest'' areas are all other areas of each State within existing NAP zones. Use of High and Low harvest zones allows States to increase and direct harvest opportunity towards RP geese in areas where relatively few NAP geese will be affected.

Under this revised delineation, New York's High and Low harvest zones would contain approximately 83% and 17%, respectively, of all NAP band returns, still well within the management plan criteria. In Connecticut, only 11% of all NAP recoveries have occurred in the NAP–L zone since delineation (2002) of these harvest zones, and no NAP recoveries have occurred in the proposed area of change. Both of these changes would not only allow for more harvest of RP geese, but would have minimal impact to NAP geese.

We also concur with the Atlantic Flyway Council's recommendations regarding frameworks for RP harvest areas. Resident Canada geese are overabundant in many areas of the Atlantic Flyway and currently number approximately 1.2 million birds, or nearly double the goal in the Atlantic Flyway Resident Canada Goose Management Plan of 650,000 geese. Allowance of an 80-day season, combined with the 25-day special Canada goose season in September, and the 2-day Youth Waterfowl Hunting Days, would potentially allow 107 days of harvest opportunity for RP geese, the maximum allowed under the Migratory Bird Treaty Act. Further, allowing 3-way splits within the regular season would provide States with greater flexibility for setting their seasons. All of these objectives are consistent with those identified in the Service's 2005 Final Environmental Impact Statement

on Resident Canada Goose Management (70 FR 69985, November 18, 2005). Since RP areas were first established in 2002 (with 70-day seasons and a 5-bird daily limit), available band recovery data from the first 3 seasons (2002–2004) indicate that harvest of migrant geese (AP, NAP, and SJBP) has been negligible. Further, the March 10 closing date in New York will not adversely impact AP geese migrating north in early spring as data indicate that AP geese make only minimal use of the RP area in New York. Lastly, delays in opening framework dates will be maintained to avoid any harvest of migrant geese during peak fall movements (e.g., early to mid October in New York) to southern regions of the Flyway.

We also agree with the Atlantic Flyway Council's recommendation to reclassify a small portion of the Northeast Goose Hunt Zone in Northampton County, North Carolina, to an SJBP Hunt Zone designation. Northampton County currently includes portions of two Canada goose hunt zones—an AP zone designation and an SJBP zone designation. Over the last 15 years, the AP zone in North Carolina has decreased in size due to contemporary information regarding locations of migrant Canada goose flocks and population affiliation. While Northampton County does hold migrant geese from both the AP and SJBP, the Flyway's original intent in including this small portion of Northampton County in the AP zone occurred at a time when the AP population was reduced throughout the entire Flyway, and when the Service's and Flyway's goal was to provide maximum protection to AP geese in North Carolina. Since then, AP geese have rebounded from low numbers in the late 1990s, and the hunting of AP geese in North Carolina has been relaxed to some extent.

We do not agree with the framework changes and season liberalizations proposed by the Mississippi Flyway Council to the SJBP harvest areas. SJBP Canada geese are managed through a management plan developed cooperatively by the Atlantic and Mississippi Flyways. In recent years, the Mississippi Flyway has undergone major changes in their philosophical approach to Canada goose management. As a result, the Mississippi Flyway Council has instituted changes in their regulatory approach to MVP, SJBP, and RP Canada goose management. While the Mississippi Flyway Council believes that their 2007–08 proposals for SJBP regulations are consistent with the current management plan, the Atlantic Flyway Council believes that more dialogue is needed on these proposals before they can support them. Given the lack of consensus between the two Flyways, we do not support changes to SJBP regulations at this time. We encourage the two Flyways to revise the SJBP management plan to reflect evolving philosophies of Canada goose management in general.

We concur with the Central Flyway's recommendation to increase the season length from 95 to 107 days for dark geese in Colorado and increase the daily bag limit in Colorado and Texas. The 2005–07 average (211,627) of mid-winter counts for the Hi-Line Population of Canada geese remains well above the established objective level (>85,000). Further, the 2005–07 average (200,821) of mid-winter counts for the Shortgrass Prairie Population of Canada geese also remains above the established population objective (150,000–200,000). Given the status of these populations and the established population objective levels, we agree that the proposed increase in season length in Colorado and the daily bag limit increases in Colorado and Texas are commensurate with the status of the populations.

Regarding the Central Flyway Council's recommendation to remove the Big Stone Power Plant area restriction in South Dakota, we agree. The restriction was put in place in 1997 due to potential concerns related to the status of Eastern Prairie Population (EPP) Canada geese. These geese nest in the Hudson Bay Lowlands of Manitoba and concentrate primarily in Manitoba, Minnesota, and Missouri during winter. The 2007 spring estimate of EPP geese was 217,500, 17 percent higher than the 2006 estimate. Spring estimates have increased an average of 3 percent per year over the last 10 years. Furthermore, the estimated number of productive geese in 2007 increased from 2006 and reached a record-high level. We see no reason to continue this restriction.

We also concur with all of the recommendations forwarded by the Pacific Flyway Council. We support the changes proposed and recognize that the changes in California and Oregon are intended to address increasing depredation problems associated with Aleutian Canada geese. Aleutian Canada geese continue to increase rapidly and currently are above the population objective levels identified in the Flyway management plan. We further note that Pacific Flyway white-fronted geese and Aleutian Canada geese are at the highest population levels that have been observed in the last 15 years. The proposed increased harvest opportunity will help address depredation concerns in northwest California and southwest Oregon associated with both of these populations. The other changes proposed for Canada geese in Washington, Utah, and Nevada, are relatively minor boundary changes in harvest zones or bag limit increases that will help address depredation concerns in these States and will not impact the harvest of other Canada goose populations of management concern in the Flyway. The proposed zone boundary change in Idaho is an administrative change and is not expected to have any measurable impact on the goose harvest from these areas.

C. Special Late Seasons

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended a 3-year experimental late Canada goose season for a 30-county area in Indiana during February 1–15. The 15-day season would be designed to increase harvests of local giant Canada geese.

Service Response: We concur with the Council on the creation of an experimental late Canada goose season in Indiana. The 2007 population estimate for Mississippi Flyway Giant Population Canada geese (MFGP) breeding in Indiana is 125,000, and the established population goal is 80,000. While Indiana has used special September Canada goose seasons to control locally-breeding MFGP, complaints regarding breeding MFGP in Indiana continue to increase. We agree that a special late goose season could help control Indiana's breeding Canada goose population. Available collar and harvest data indicate that the proposed experimental area is comprised of well above 80 percent non-migrant geese, as required by the current criteria.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommends a 50-day season with a 2-bird daily bag limit for Atlantic brant.

Service Response: We concur with the Atlantic Flyway Council recommendation. The 2007 Mid-Winter Index (MWI) for Atlantic brant was 150,559. While the Brant Management Plan prescribes a 50-day season with a 2-bird daily bag limit when the MWI estimate falls within 125,000–150,000, and consideration of a 60-day season with a 3-bird daily bag limit when the MWI estimate is above 150,000, the outlook for productivity is below average due to highly variable conditions on the main breeding grounds. Thus, we agree with the

Council that an increase of 20 days (from last year's 30-day season) without the associated daily bag limit increase is a conservative approach to harvest management for the upcoming season.

National Environmental Policy Act (NEPA) Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Annual NEPA considerations are covered under a separate Environmental Assessment (EA), ''Duck Hunting Regulations for 2007–08,'' and an August 27, 2007, Finding of No Significant Impact (FONSI). Copies of the EA and FONSI are available upon request from the address indicated under **ADDRESSES**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as we announced in a March 9, 2006, **Federal Register** notice (71 FR 12216). A scoping report summarizing the scoping comments and scoping meetings is available either at the address indicated under **ADDRESSES** or on our Web site at *http://www.fws.gov/migratorybirds*.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *.'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, updated in 1998, and updated again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 million to $1.064 billion, with a mid-point estimate of $899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/SpecialTopics/EconomicAnalysis-Final-2004.pdf.*

This year, due to limited data availability, we partially updated the 2004 analysis, but restricted our analysis to duck hunting. Results indicate that the total consumer surplus of the annual duck hunting frameworks is on the order of $222 to $360 million, with a mid-point estimate of $291 million. We plan to perform a full update of the analysis in 2008. Copies of the updated analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/SpecialTopics/EconomicAnalysis-2007Update.pdf.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/SpecialTopics/EconomicAnalysis-Final-2004.pdf.*

This year, due to limited data availability, we partially updated the 2004 analysis, but restricted our analysis to duck hunting. Results indicate that the duck hunters would spend between $291 million and $473.5 million at small businesses in 2007. We plan to perform a full update of the analysis in 2008 when the full results from the 2006 National Hunting and Fishing Survey is available. Copies of the updated analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/SpecialTopics/EconomicAnalysis-2007Update.pdf.*

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (PRA). There are no new information collections in this rule that would require OMB approval under the PRA. The existing various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the surveys associated with the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 2/29/2008). This information is used to provide a sampling frame for voluntary

national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations.

A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

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

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 11 proposed rule we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2007–08 migratory bird hunting season. The resulting proposals were contained in a separate rulemaking. By virtue of these actions, we have consulted with all the Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), we prescribe final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select hunting season dates and other options. Upon receipt of selections, we will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 2007–08 hunting season.

List of Subjects in 50 CFR Part 20

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

The rules that eventually will be promulgated for the 2007–08 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: September 14, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

PART 20—[AMENDED]

Final Regulations Frameworks for 2007–08 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved the following frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 2007, and March 10, 2008.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise

specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway that lies west of the 100th meridian.

Definitions: For the purpose of hunting regulations listed below, the collective terms ''dark'' and ''light'' geese include the following species:

Dark geese: Canada geese, white-fronted geese, brant (except in California, Oregon, Washington, and the Atlantic Flyway), and all other goose species except light geese.

Light geese: snow (including blue) geese and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Waterfowl Seasons in the Atlantic Flyway

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special Youth Waterfowl Hunting Days

Outside Dates: States may select two consecutive days (hunting days in Atlantic Flyway States with compensatory days) per duck-hunting zone, designated as ''Youth Waterfowl Hunting Days,'' in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holiday, or other non-school day when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, tundra swans, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day. Tundra swans may only be taken by participants possessing applicable tundra swan permits.

Atlantic Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 22) and the last Sunday in January (January 27).

Hunting Seasons and Duck Limits: 60 days. The daily bag limit is 6 ducks, including no more than 4 mallards (2 hens), 2 scaup, 1 black duck, 1 pintail, 2 canvasbacks, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, and 4 scoters.

Closures: The season on harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 2 of which may be hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only two of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Connecticut River Zone, Vermont: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Inland Zone of New Hampshire.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. These seasons also include white-fronted geese. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date for Atlantic Population (AP) goose seasons overlaps with special late-season frameworks for resident geese, the framework closing date for AP goose seasons is January 14.

Connecticut

North Atlantic Population (NAP) Zone: Between October 1 and January 31, a 60-day season may be held with a 2-bird daily bag limit in the H Unit; and between October 1 and February 15, a 70-day season with a 3-bird daily bag in the L Unit.

Atlantic Population (AP) Zone: A 45-day season may be held between the fourth Saturday in October (October 27) and January 31, with a 3-bird daily bag limit.

South Zone: A special season may be held between January 15 and February 15, with a 5-bird daily bag limit.

Delaware: A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

Florida: An 80-day season may be held between November 15 and February 15, with a 5-bird daily bag

limit. The season may be split into 3 segments.

Georgia: In specific areas, an 80-day season may be held between November 15 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Maine: A 60-day season may be held Statewide between October 1 and January 31, with a 2-bird daily bag limit.

Maryland

Resident Population (RP) Zone: An 80-day season may be held between November 15 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

Massachusetts

NAP Zone: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between October 20 and January 31, with a 3-bird daily bag limit.

New Hampshire

A 60-day season may be held statewide between October 1 and January 31, with a 2-bird daily bag limit.

New Jersey

Statewide: A 45-day season may be held between the fourth Saturday in October (October 27) and January 31, with a 3-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held in designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

New York

NAP Zone: Between October 1 and January 31, a 60-day season may be held, with a 2-bird daily bag limit in the High Harvest areas; and between October 1 and February 15, a 70-day season may be held, with a 3-bird daily bag limit in the Low Harvest areas.

Special Late Goose Season Area: An experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit in designated areas of Chemung, Delaware, Tioga, Broome, Sullivan, Westchester, Nassau, Suffolk, Orange, Dutchess, Putnam, and Rockland Counties.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 27), except in the Lake Champlain Area where the opening date is October 20, and January 31, with a 3-bird daily bag limit.

RP Zone: An 80-day season may be held between the fourth Saturday in October (October 27) and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

North Carolina

SJBP Zone: A 70-day season may be held between October 1 and December 31, with a 2-bird daily bag limit.

RP Zone: An 80-day season may be held between October 1 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Northeast Hunt Unit: A 30-day experimental season (1,000 permits) may be held concurrent with the season selected for the Back Bay Area of Virginia. The seasonal bag limit is 1 bird.

Pennsylvania

SJBP Zone: A 70-day season may be held between the second Saturday in October (October 13) and February 15, with a 2-bird daily bag limit until January 14 and a 5-bird daily bag limit between January 15 and February 15.

Pymatuning Zone: A 50-day season may be held between October 1 and January 31, with a 2-bird daily bag limit.

RP Zone: An 80-day season may be held between November 15 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 27) and January 31, with a 3-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held from January 15 to February 15, with a 5-bird daily bag limit.

Rhode Island

A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. An experimental season may be held in designated areas from January 15 to February 15, with a 5-bird daily bag limit.

South Carolina

In designated areas, an 80-day season may be held during November 15 to February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Vermont

A 45-day season may be held between the fourth Saturday in October (October 27), except in the Lake Champlain Zone and Interior Zone where the opening date is October 20, and January 31, with a 3-bird daily bag limit.

Virginia

SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 2-bird daily bag limit. Additionally, an experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

RP Zone: An 80-day season may be held between November 15 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Back Bay Area: A 30-day experimental season may be held between December 24 and January 26 in the AP Zone, with a 2-bird daily bag limit.

West Virginia

An 80-day season may be held between October 1 and January 31, with a 5-bird daily bag limit. The season may be split into 3 segments.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with a 15-bird daily bag limit and no possession limit. States may split their seasons into three segments, except in Delaware and Maryland, where, following the completion of their duck season, and until March 10, Delaware and Maryland may split the remaining portion of the season to allow hunting on Mondays, Wednesdays, Fridays, and Saturdays only.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day season between the Saturday nearest September 24 (September 22) and January 31, with a 2-bird daily bag limit. States may split their seasons into two segments.

Mississippi Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 22) and the last Sunday in January (January 27).

Hunting Seasons and Duck Limits: The season may not exceed 60 days, with a daily bag limit of 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 2 scaup, 1 black duck, 1 pintail, 2 canvasbacks, 2 wood ducks, and 2 redheads.

Merganser Limits: The daily bag limit is 5, only 2 of which may be hooded

mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only 2 of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Arkansas and Mississippi, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments.

Season Lengths, Outside Dates, and Limits: States may select seasons for light geese not to exceed 107 days, with 20 geese daily between the Saturday nearest September 24 (September 22) and March 10; for white-fronted geese not to exceed 72 days with 2 geese daily or 86 days with 1 goose daily between the Saturday nearest September 24 (September 22) and the Sunday nearest February 15 (February 17); and for brant not to exceed 70 days, with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest September 24 (September 22) and January 31. There is no possession limit for light geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State. Except as noted below, the outside dates for Canada geese are the Saturday nearest September 24 (September 22) and January 31.

Alabama

In the SJBP Goose Zone, the season for Canada geese may not exceed 50 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas

In the Northwest Zone, the season for Canada geese may extend for 50 days. In the remainder of the State, the season may not exceed 40 days. The season may extend to February 15. The daily bag limit is 2 Canada geese.

Illinois

The season for Canada geese may extend for 85 days in the North and Central Zones and 66 days in the South Zone. The daily bag limit is 2 Canada geese.

Indiana

The season for Canada geese may extend for 74 days, except in the SJBP Zone, where the season may not exceed 50 days. The daily bag limit is 2 Canada geese.

Late Canada Goose Season Zone-—n experimental special Canada goose season of up to 15 days may be held during February 1–15. During this special season the daily bag limit cannot exceed 5 Canada geese.

Iowa

The season for Canada geese may extend for 90 days. The daily bag limit is 2 Canada geese.

Kentucky

(a) Western Zone—The season for Canada geese may extend for 70 days (85 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana

The season for Canada geese may extend for 16 days. During the season, the daily bag limit is 1 Canada goose and 2 white-fronted geese with a 72-day white-fronted goose season or 1 white-fronted goose with an 86-day season. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan

(a) MVP—Upper and Lower Peninsula Zones—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 45 days. The daily bag limit is 2 Canada geese.

(1) Allegan County GMU—The Canada goose season is 45 days. The daily bag limit is 2 Canada geese.

(2) Muskegon Wastewater GMU—The Canada goose season is 45 days. The daily bag limit is 2 Canada geese.

(b) SJBP Zone—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 30 days. The daily bag limit is 2 Canada geese.

(1) Saginaw County GMU—The Canada goose season will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Tuscola/Huron GMU—The Canada goose season will close after 50 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(c) Southern Michigan Late Season Canada Goose Zone—A 30-day special Canada goose season may be held between December 31 and February 7. The daily bag limit may not exceed 5 Canada geese.

Minnesota

(a) West Zone

(1) West Central Zone—The season for Canada geese may extend for 41 days. The daily bag limit is 2 Canada geese.

(2) Remainder of West Zone—The season for Canada geese may extend for 60 days. The daily bag limit is 2 Canada geese.

(b) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

(c) Special Late Canada Goose Season—A special Canada goose season of up to 10 days may be held in December, except in the West Central Goose zone. During the special season, the daily bag limit is 5 Canada geese, except in the Southeast Goose Zone, where the daily bag limit is 2.

Mississippi

The season for Canada geese may extend for 70 days. The daily **BAG** limit is 3 Canada geese.

Missouri

The season for Canada geese may extend for 79 days and may be split into 3 segments provided that at least 1 segment of at least 9 days occurs prior to October 16. The daily bag limit is 3 Canada geese through October 15 and 2 Canada geese thereafter.

Ohio

The season for Canada geese may extend for 60 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 40 days and the daily bag limit is 2 Canada geese. A special Canada goose season of up to 22 days, beginning the first Saturday after January 10, may be held in the following Counties: Allen (north of U.S. Highway 30), Fulton, Geauga (north of Route 6), Henry, Huron, Lucas (Lake Erie Zone closed), Seneca, and Summit (Lake Erie Zone closed). During the special season, the daily bag limit is 2 Canada geese.

Tennessee

(a) Northwest Zone—The season for Canada geese may not exceed 72 days,

and may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Southwest Zone—The season for Canada geese may extend for 72 days. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone—The season for Canada geese may extend for 59 days, at least 9 of which must occur before Oct. 16. The daily bag limit is 2 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 72 days. The daily bag limit is 2 Canada geese.

Wisconsin

(a) Horicon Zone—The framework opening date for all geese is September 16. The season may not exceed 92 days. All Canada geese harvested must be tagged. The season limit will be 6 Canada geese per permittee.

(b) Collins Zone—The framework opening date for all geese is September 16. The season may not exceed 70 days. All Canada geese harvested must be tagged. The season limit will be 6 Canada geese per permittee.

(c) Exterior Zone—The framework opening date for all geese is September 16. The season may not exceed 85 days. The daily bag limit is 2 Canada geese.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Central Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 22) and the last Sunday in January (January 27).

Hunting Seasons

(1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days. The last 23 days may start no earlier than the Saturday nearest December 10 (December 8).

(2) Remainder of the Central Flyway: 74 days.

Bag Limits

(1) Colorado, Montana, Nebraska, New Mexico, and Oklahoma: The daily bag limit is 6 ducks, with species and sex restrictions as follows: 5 mallards (no more than 2 of which may be females), 2 redheads, 2 scaup, 2 wood ducks, 1 pintail, 1 mottled duck, and 1 canvasback. For pintails and canvasbacks, the season length would be 39 days, which may be split according to applicable zones/split duck hunting configurations approved for each State. A single canvasback and pintail may also be included in the 6-bird daily bag limit for designated youth-hunt days.

(2) Kansas, North Dakota, South Dakota, Texas, and Wyoming: The daily bag limit is 5 ducks, with species and sex restrictions as follows: 2 scaup, 2 redheads, and 2 wood ducks, and only 1 duck from the following group—hen mallard, mottled duck, pintail, canvasback.

Merganser Limits: The daily bag limit is 5 mergansers, only 2 of which may be hooded mergansers. In States that include mergansers in the duck daily bag limit, the daily limit may be the same as the duck bag limit, only two of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

In Colorado, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest September 24 (September 22) and the Sunday nearest February 15 (February 17). For light geese, outside dates for seasons may be selected between the Saturday nearest September 24 (September 22) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions that are consistent with the late-winter snow goose hunting strategy cooperatively developed by the Central Flyway Council and the Service are required.

Season Lengths and Limits

Light Geese: States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 20 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 107 days with a daily bag limit of 3. Additionally, in the Eastern Goose Zone of Texas, an alternative season of 107 days with a daily bag limit of 1 Canada goose may be selected. For white-fronted geese, these States may select either a season of 72 days with a bag limit of 2 or a 86-day season with a bag limit of 1.

In Montana, New Mexico and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In Colorado, the season may not exceed 107 days. The daily bag limit is 4 dark geese in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 95 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 4. The daily bag limit for white-fronted geese is 1.

Pacific Flyway

Ducks, Mergansers, Coots, Common Moorhens, and Purple Gallinules

Hunting Seasons and Duck Limits: Concurrent 107 days. The daily bag limit is 7 ducks and mergansers, including no more than 2 female mallards, 1 pintail, 2 canvasbacks, 3 scaup, and 2 redheads.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot, Common Moorhen, and Purple Gallinule Limits: The daily bag and possession limits of coots, common moorhens, and purple gallinules are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest September 24 (September 22) and the last Sunday in January (January 27).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming may select hunting seasons by zones. Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming may split their seasons into two segments.

Colorado, Montana, and New Mexico may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits

California, Oregon, and Washington: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (September 29), and the last Sunday in January (January 27). Basic daily bag limits are 4 light geese and 4 dark geese, except in California, Oregon, and Washington, where the dark goose bag limit does not include brant.

In Oregon's South Coast Zone and California's North Coast Special Management Area, 107-day seasons may be selected, with outside dates between the Saturday nearest October 1 (September 29) and March 10. Hunting days that occur after the last Sunday in January shall be concurrent in both zones. A 3-way split season may be selected in Oregon's South Coast Zone.

Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 22), and the last Sunday in January (January 27). Basic daily bag limits are 4 light geese and 4 dark geese.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Brant Season

Oregon may select a 16-day season, Washington a 16-day season, and California a 30-day season. Days must be consecutive. Washington and California may select hunting seasons by up to two zones. The daily bag limit is 2 brant and is in addition to dark goose limits. In Oregon and California, the brant season must end no later than December 15.

Arizona: The daily bag limit for dark geese is 3.

California

Northeastern Zone: The daily bag limit is 6 dark geese and may include no more than 1 cackling Canada goose or 1 Aleutian Canada goose.

Southern Zone: In the Imperial County Special Management Area, light geese only may be taken from the end of the general goose hunting season through the first Sunday in February (February 3).

Balance-of-the-State Zone: Limits may not include more than 6 dark geese per day including 6 cackling Canada geese or 6 Aleutian Canada geese. In the Sacramento Valley Special Management Area (West), the season on white-fronted geese must begin no earlier than the last Saturday in October and end on or before December 14, and the daily bag limit shall contain no more than 2 white-fronted geese.

Oregon: Except as subsequently noted, the dark goose daily bag limit is 4, including not more than 1 cackling or Aleutian goose.

Harney, Lake, and Malheur County Zone: For Lake County only, the daily dark goose bag limit may not include more than 2 white-fronted geese.

Klamath County Zone: A 107-day season may be selected, with outside dates between the Saturday nearest October 1 (September 29), and March 10. A 3-way split season may be selected. The daily dark goose bag limit is 4 dark geese and 4 white geese except for hunting days that occur after the last Sunday in January when only white-fronted geese may be taken with a daily bag limit of 2.

Northwest Special Permit Zone: Except for designated areas outside of Tillamook County, the daily bag limit of dark geese is 4 including not more than 2 cackling or Aleutian geese. In those designated areas of Tillamook County open to hunting, the daily bag limit of dark geese is 2.

South Coast Zone: The daily dark goose bag limit is 4 including cackling and Aleutian geese.

Southwest Zone: The daily dark goose bag limit is 4 including cackling and Aleutian geese.

Washington: The daily bag limit is 4 geese. A 107-day season may be selected in Areas 4 and 5 (eastern Washington).

Southwest Quota Zone: In the Southwest Quota Zone, except for designated areas, there will be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 85 dusky geese. See section on quota zones. In this area, the daily bag limit may include 2 cackling geese. In Southwest Quota Zone Area 2B (Pacific County), the daily bag limit may include 1 Aleutian goose.

Colorado: The daily bag limit for dark geese is 3 geese.

Idaho: The daily bag limit is 4 geese.

Nevada: The daily bag limit for dark geese is 3.

New Mexico: The daily bag limit for dark geese is 3.

Utah: The daily bag limit for dark geese is 3.

Quota Zones

Seasons on dark geese must end upon attainment of individual quotas of dusky geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days, and the established quota of dusky geese must not be exceeded. Hunting of dark geese in those designated areas will only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky geese. If the monitoring program cannot be conducted, for any reason, the season must immediately close. In the designated areas of the Washington Southwest Quota Zone, a special late dark goose season may be held between the Saturday following the close of the general goose season and March 10.

In the Northwest Special Permit Zone of Oregon, the framework closing date is extended to the Sunday closest to March 1 (March 2). Regular dark goose seasons may be split into 3 segments within the Oregon and Washington quota zones.

Swans

In portions of the Pacific Flyway (Montana, Nevada, and Utah), an open season for taking a limited number of swans may be selected. Permits will be issued by the State and will authorize each permittee to take no more than 1 swan per season with each permit. Nevada may issue up to 2 permits per hunter. Montana and Utah may only issue 1 permit per hunter. Each State's season may open no earlier than the Saturday nearest October 1 (September 29). These seasons are also subject to the following conditions:

Montana: No more than 500 permits may be issued. The season must end no later than December 1. The State must implement a harvest-monitoring program to measure the species composition of the swan harvest and should use appropriate measures to maximize hunter compliance in reporting bill measurement and color information.

Utah: No more than 2,000 permits may be issued. During the swan season, no more than 10 trumpeter swans may be taken. The season must end no later than the second Sunday in December (December 9) or upon attainment of 10 trumpeter swans in the harvest, whichever occurs earliest. The Utah season remains subject to the terms of

the Memorandum of Agreement entered into with the Service in August 2001, regarding harvest monitoring, season closure procedures, and education requirements to minimize the take of trumpeter swans during the swan season.

Nevada: No more than 650 permits may be issued. During the swan season, no more than 5 trumpeter swans may be taken. The season must end no later than the Sunday following January 1 (January 6) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In addition, the States of Utah and Nevada must implement a harvest-monitoring program to measure the species composition of the swan harvest. The harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. The States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination. Further, the States of Montana, Nevada, and Utah must achieve at least an 80-percent compliance rate, or subsequent permits will be reduced by 10 percent. All three States must provide to the Service by June 30, 2008, a report detailing harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas.

Tundra Swans

In portions of the Atlantic Flyway (North Carolina and Virginia) and the Central Flyway (North Dakota, South Dakota [east of the Missouri River], and that portion of Montana in the Central Flyway), an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States that authorize the take of no more than 1 tundra swan per permit. A second permit may be issued to hunters from unused permits remaining after the first drawing. The States must obtain harvest and hunter participation data. These seasons are also subject to the following conditions:

In the Atlantic Flyway

—The season is experimental.

—The season may be 90 days, from October 1 to January 31.

—In North Carolina, no more than 5,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway:

—The season may be 107 days, from the Saturday nearest October 1 (September 29) to January 31.

—In the Central Flyway portion of Montana, no more than 500 permits may be issued.

—In North Dakota, no more than 2,200 permits may be issued.

—In South Dakota, no more than 1,300 permits may be issued.

Area, Unit, and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine State line to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont State line on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut State line.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire State line on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island State line; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Coastal Zone: That portion of the State east of a line extending west from the Maine State line in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I–95 (New Hampshire Turnpike) in Hampton, and south along I–95 to the Massachusetts State line.

Inland Zone: That portion of the State north and west of the above boundary and along the Massachusetts State line crossing the Connecticut River to Interstate 91 and northward in Vermont to Route 2, east to 102, northward to the Canadian border.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York State line in Raritan Bay and extending west along the New York State line to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware State line in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania State line in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont State line.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania State line.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81 to NY 31, east along NY 31 to NY 13, north along NY 13 to NY 49, east along NY 49 to NY 365, east

along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont State line, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York State line along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts State line at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

West Virginia

Zone 1: That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I–64; I–64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I–79, I–79 north to I–68; I–68 east to the Maryland State line; and along the State line to the point of beginning.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending west from the Indiana border along Peotone-Beecher Road to Illinois Route 50, south along Illinois Route 50 to Wilmington-Peotone Road, west along Wilmington-Peotone Road to Illinois Route 53, north along Illinois Route 53 to New River Road, northwest along New River Road to Interstate Highway 55, south along I–55 to Pine Bluff-Lorenzo Road, west along Pine Bluff-Lorenzo Road to Illinois Route 47, north along Illinois Route 47 to I–80, west along I–80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone: That portion of the State south of the North Zone to a line extending west from the Indiana border along Interstate Highway 70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 156, west along Illinois Route 156 to A Road, north and west on A Road to Levee Road, north on Levee Road to the south shore of New Fountain Creek, west along the south shore of New Fountain Creek to the Mississippi River, and due west across the Mississippi River to the Missouri border.

South Zone: The remainder of Illinois.

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois State line along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio State line.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois State line along Interstate Highway 64 to New Albany, east along State Road 62 to State Road 56, east along State Road 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio State line.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State Highway 37, southeast along State Highway 37 to State Highway 183, northeast along State Highway 183 to State Highway 141, east along State Highway 141 to U.S. Highway 30, then east along U.S. Highway 30 to the Illinois border.

South Zone: The remainder of Iowa.

Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west and south of a line extending south from the Arkansas State line along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to the Mississippi State line.

East Zone: The remainder of Louisiana.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone: The remainder of Michigan.

Minnesota

North Duck Zone: That portion of the State north of a line extending east from the North Dakota State line along State Highway 210 to State Highway 23, east along State Highway 23 to State Highway 39, then east along State Highway 39 to the Wisconsin State line at the Oliver Bridge.

South Duck Zone: The remainder of Minnesota.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois State line (Lock and Dam 25) on Lincoln County Highway N to Missouri Highway 79; south on Missouri Highway 79 to Missouri Highway 47; west on Missouri Highway 47 to Interstate 70; west on Interstate 70 to the Kansas State line.

South Zone: That portion of Missouri south of a line running west from the Illinois State line on Missouri Highway 34 to Interstate 55; south on Interstate 55 to U.S. Highway 62; west on U.S. Highway 62 to Missouri Highway 53; north on Missouri Highway 53 to Missouri Highway 51; north on Missouri Highway 51 to U.S. Highway 60; west on U.S. Highway 60 to Missouri Highway 21; north on Missouri Highway 21 to Missouri Highway 72; west on Missouri Highway 72 to Missouri Highway 32; west on Missouri Highway 32 to U.S. Highway 65; north on U.S. Highway 65 to U.S. Highway 54; west on U.S. Highway 54 to the Kansas State line.

Middle Zone: The remainder of Missouri.

Ohio

North Zone: That portion of the State north of a line extending east from the Indiana State line along U.S. Highway 33 to State Route 127, south along SR 127 to SR 703, south along SR 703 to SR 219, east along SR 219 to SR 364, north along SR 364 to SR 703, east along SR 703 to SR 66, north along SR 66 to U.S. 33, east along U.S. 33 to SR 385, east along SR 385 to SR 117, south along SR 117 to SR 273, east along SR 273 to SR 31, south along SR 31 to SR 739, east along SR 739 to SR 4, north along SR 4 to SR 95, east along SR 95 to SR 13, southeast along SR 13 to SR 3, northeast along SR 3 to SR 60, north along SR 60 to U.S. 30, east along U.S. 30 to SR 3, south along SR 3 to SR 226, south along SR 226 to SR 514, southwest along SR 514 to SR 754, south along SR 754 to SR 39/60, east along SR 39/60 to SR 241, north along SR 241 to U.S. 30, east along U.S. 30 to SR 39, east along SR 39 to the Pennsylvania State line.

South Zone: The remainder of Ohio.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota State line along U.S. Highway 10 to U.S. Highway 41, then north on U.S. Highway 41 to the Michigan State line.

South Zone: The remainder of Wisconsin.

Central Flyway

Colorado (Central Flyway Portion)

Eastern Plains Zone: That portion of the State east of Interstate 25, and all of El Paso, Pueblo, Heurfano, and Las Animas Counties.

Mountain/Foothills Zone: That portion of the State west of Interstate 25 and east of the Continental Divide, except El Paso, Pueblo, Heurfano, and Las Animas Counties.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska border and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; southwest on U.S. 56 to KS 19; east on KS 19 to U.S. 281; south on U.S. 281 to U.S. 54; west on U.S. 54 to U.S. 183; north on U.S. 183 to U.S. 56; southwest on U.S. 56 to Ford Co. Road 126; south on Ford Co. Road 126 to U.S. 400; northwest on U.S. 400 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska

High Plains Zone: That portion of Nebraska lying west of a line beginning at the South Dakota-Nebraska border on U.S. 183, south on U.S. 183 to U.S. 20, west on U.S. 20 to NE 7, south on NE 7 to NE 91, southwest on NE 91 to NE 2, southeast on NE 2 to NE 92, west on NE 92 to NE 40, south on NE 40 to NE 47, south on NE 47 to NE 23, east on NE 23 to U.S. 283 and south on U.S. 283 to the Kansas-Nebraska border.

Low Plains Zone 1: That portion of Dixon County west of NE 26E Spur and north of NE 12; those portions of Cedar County north of NE 12; those portions of Knox counties north of NE 12 to intersection of Niobrara River; all of Boyd County; Keya Paha County east of U.S. 183. Both banks of the Niobrara River in Keya Paha, Boyd, and Knox counties east of U.S. 183 shall be included in Zone 1.

Low Plains Zone 2: Area bounded by designated Federal and State highways and political boundaries beginning at the Kansas-Nebraska border on U.S. 75 to U.S. 136; east to the intersection of U.S. 136 and the Steamboat Trace (Trace); north along the Trace to the intersection with Federal Levee R–562; north along Federal Levee R–562 to the intersection with the Trace; north along the Trace/Burlington Northern Railroad right-of-way to NE 2; west to U.S. 75; north to NE 2; west to NE 43; north to U.S. 34; east to NE 63; north and west to U.S. 77; north to NE 92; west to U.S. 81; south to NE 66; west to NE 14; south to County Road 22 (Hamilton County); west to County Road M; south to County Road 21; west to County Road K; south U.S. 34; west to NE 2; south to U.S. I–80; west to Gunbarrel Road. (Hall/Hamilton county line); south to Giltner Road; west to U.S. 281; south to U.S. 34; west to NE 10; north to County Road ''R'' (Kearney County) and County Road #742 (Phelps County); west to County Road #438 (Gosper County line); south along County Road #438 (Gosper County line) to County Road #726 (Furnas County line); east to County Road #438 (Harlan County line); south to U.S. 34; south and west to U.S. 136; east to NE 14; south to the Kansas-Nebraska border; west to U.S. 283; north to NE 23; west to NE 47; north to U.S. 30; east to NE 14; north to NE 52; west and north to NE 91 to U.S. 281; south to NE 22; west to NE 11; northwest to NE 91; west to Loup County Line; north to Loup-Brown county line; east along northern boundaries of Loup, Garfield and

Wheeler counties; south on the Wheeler-Antelope county line to NE 70; east to NE 14; south to NE 39; southeast to NE 22; east to U.S. 81; southeast to U.S. 30; east to U.S. 75; north to the Washington County line; east to the Iowa-Nebraska border; south along the Iowa-Nebraska border; to the beginning at U.S. 75 and the Kansas-Nebraska border.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota

High Plains Unit: That portion of the State south and west of a line from the South Dakota State line along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains Unit: The remainder of North Dakota.

Oklahoma

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas State line along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, east along OK 33 to OK 18, north along OK 18 to OK 51, west along OK 51 to I–35, north along I–35 to U.S. 412, west along U.S. 412 to OK 132, then north along OK 132 to the Kansas State line.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota

High Plains Zone: That portion of the State west of a line beginning at the North Dakota State line and extending south along U.S. 83 to U.S. 14, east on U.S. 14 to Blunt, south on the Blunt-Canning road to SD 34, east and south on SD 34 to SD 50 at Lee's Corner, south on SD 50 to I–90, east on I–90 to SD 50, south on SD 50 to SD 44, west on SD 44 across the Platte-Winner bridge to SD 47, south on SD 47 to U.S. 18, east on U.S. 18 to SD 47, south on SD 47 to the Nebraska State line.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along U.S. 212 to the Minnesota State line.

South Zone: That portion of Gregory County east of SD 47 and south of SD 44; Charles Mix County south of SD 44 to the Douglas County line; south on SD 50 to Geddes; east on the Geddes Highway to U.S. 281; south on U.S. 281 and U.S. 18 to SD 50; south and east on SD 50 to the Bon Homme County line; the Counties of Bon Homme, Yankton, and Clay south of SD 50; and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of South Dakota.

Texas

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma State line along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana State line at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway portion)

Zone 1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, and Washakie; and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary meets Park County Road 8VC, east along Park County Road 8VC to Park County Road 1AB, continuing east along Park County Road 1AB to Wyoming Highway 120, north along WY Highway 120 to WY Highway 294, south along WY Highway 294 to Lane 9, east along Lane 9 to Powel and WY Highway 14A, and finally east along WY Highway 14A to the Park County and Big Horn County line.

Zone 2: The remainder of Wyoming.

Pacific Flyway

Arizona

Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town or Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99: south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines; west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada State line south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south

on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada State line.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; Blaine; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Includes the following Counties or portions of Counties: Ada; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada

Lincoln and Clark County Zone: All of Clark and Lincoln Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties, and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Wyoming

Snake River Zone: Beginning at the south boundary of Yellowstone National Park and the Continental Divide; south along the Continental Divide to Union Pass and the Union Pass Road (U.S.F.S. Road 600); west and south along the Union Pass Road to U.S. F.S. Road 605; south along U.S.F.S. Road 605 to the Bridger-Teton National Forest boundary; along the national forest boundary to the Idaho State line; north along the Idaho State line to the south boundary of Yellowstone National Park; east along the Yellowstone National Park boundary to the Continental Divide.

Balance of Flyway Zone: Balance of the Pacific Flyway in Wyoming outside the Snake River Zone.

Geese

Atlantic Flyway

Connecticut

NAP L-Unit: That portion of Fairfield County north of Interstate 95 and that portion of New Haven County; starting at I–95 bridge on Housatonic River; north of Interstate 95; west of Route 10 to the intersection of Interstate 691; west along Interstate 691 to Interstate 84; west and south on Interstate 84 to the Naugatuck River; north on the Naugatuck River to the Litchfield County line, then extending west along the Litchfield County line to the intersection of the Litchfield and Fairfield County lines.

NAP H-Unit: All of the rest of the State not included in the AP or NAP–L descriptions.

AP Unit: Litchfield County and the portion of Hartford County, west of a line beginning at the Massachusetts State line in Suffield and extending south along Route 159 to its intersection with Route 91 in Hartford, and then extending south along Route 91 to its intersection with the Hartford/Middlesex County line.

South Zone: Same as for ducks.

North Zone: Same as for ducks.

Maryland

Resident Population (RP) Zone: Garrett, Allegany, Washington, Frederick, Howard, and Montgomery Counties; that portion of Baltimore County south of Route 138, Route 137, and Mount Carmel Road; that portion of Anne Arundel County west of Interstate 895, Interstate 97 and Route 3; that portion of Prince George's County west of Route 3 and Route 301, that portion of Charles County west of Route 301 to the Virginia State line; and that portion of Carroll County south of Route 88, west of Route 30 from the intersection of Route 30 and Route 88 to the intersection of Route 30 and Route 482, south of Route 482, south of Route 27 from the intersection of Route 27 and Route 482 to the intersection of Route 27 and Route 97, and west of Route 97 from the Intersection of Route 27 and Route 97 to the Pennsylvania line.

AP Zone: Remainder of the State.

Massachusetts

NAP Zone: Central Zone (same as for ducks) and that portion of the Coastal Zone that lies north of route 139 from Green Harbor.

AP Zone: Remainder of the State.

Special Late Season Area: That portion of the Coastal Zone (see duck zones) that lies north of the Cape Cod Canal and east of Route 3, north to the New Hampshire line.

New Hampshire

Same zones as for ducks.

New Jersey

North: That portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South: That portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to

Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York

Lake Champlain Goose Area: That area of New York State lying east and north of a continuous line extending along Route 11 from the New York-Canada International boundary south to Route 9B, south along Route 9B to Route 9, south along Route 9 to Route 22 south of Keeseville, south along Route 22 to the west shore of South Bay along and around the shoreline of South Bay to Route 22 on the east shore of South Bay, southeast along Route 22 to Route 4, northeast along Route 4 to the New York-Vermont boundary.

Northeast Goose Area: The same as the Northeastern Waterfowl Hunting Zone, which is that area of New York State lying north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate 81, south along Interstate Route 81 to Route 31, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Interstate Route 87, north along Interstate Route 87 to Route 9 (at Exit 20), north along Route 9 to Route 149, east along Route 149 to Route 4, north along Route 4 to the New York-Vermont boundary, exclusive of the Lake Champlain Zone.

East Central Goose Area: That area of New York State lying inside of a continuous line extending from Interstate Route 81 in Cicero, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, west along Route 146 to Albany County Route 252, northwest along Route 252 to Schenectady County Route 131, north along Route 131 to Route 7, west along Route 7 to Route 10 at Richmondville, south on Route 10 to Route 23 at Stamford, west along Route 23 to the south bank of the Susquehanna River, southwest along the south bank of the Susquehanna River to Interstate Route 88 near Harpursville, west along Route 88 to Route 79, northwest along Route 79 to Route 26 in Whitney Point, southwest along Route 26 to Interstate Route 81, north along Route 81 to the point of beginning.

West Central Goose Area: That area of New York State lying within a continuous line beginning at the point where the northerly extension of Route 269 (County Line Road on the Niagara-Orleans County boundary) meets the International boundary with Canada, south to the shore of Lake Ontario at the eastern boundary of Golden Hill State Park, south along the extension of Route 269 and Route 269 to Route 104 at Jeddo, west along Route 104 to Niagara County Route 271, south along Route 271 to Route 31E at Middleport, south along Route 31E to Route 31, west along Route 31 to Griswold Street, south along Griswold Street to Ditch Road, south along Ditch Road to Foot Road, south along Foot Road to the north bank of Tonawanda Creek, west along the north bank of Tonawanda Creek to Route 93, south along Route 93 to the NYS Thruway, east along the Thruway 90 to Route 98 (at Thruway Exit 48) in Batavia, south along Route 98 to Route 20, east along Route 20 to Route 19 in Pavilion Center, south along Route 19 to Route 63, southeast along Route 63 to Route 246, south along Route 246 to Route 39 in Perry, south along Route 39 to Route 19A (south of Castile), south and southeast along Route 19A to Route 436, east along Route 436 to Route 36 in Dansville, south along Route 36 to Route 17, east along Route 17 to Belfast Street at Bath, east along Belfast Street to Route 415 (West Washington Street), southeast along Route 415 to Route 54, northeast along Route 54 to Steuben County Route 87, northeast along Route 87 to Steuben County Route 96, east along Route 96 to Steuben County Route 114, east along Route 114 to Schuyler County Route 23, east and southeast along Route 23 to Schuyler County Route 28, southeast along Route 28 to Route 409 at Watkins Glen, south along Route 409 to Route 14, south along Route 14 to Route 224 at Montour Falls, east along Route 224 to Route 228 in Odessa, north along Route 228 to Route 79 in Mecklenburg, east along Route 79 to Route 366 in Ithaca, northeast along Route 366 to Route 13, northeast along Route 13 to Interstate Route 81 in Cortland, north along Route 81 to the north shore of the Salmon River to shore of Lake Ontario, extending generally northwest in a straight line to the nearest point of the International boundary with Canada, south and west along the International boundary to the point of beginning.

Hudson Valley Goose Area: That area of New York State lying within a continuous line extending from Route 4 at the New York-Vermont boundary, west and south along Route 4 to Route 149 at Fort Ann, west on Route 149 to Route 9, south along Route 9 to Interstate Route 87 (at Exit 20 in Glens Falls), south along Route 87 to Route 29, west along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, southeast along Route 146 to Main Street in Altamont, west along Main Street to Route 156, southeast along Route 156 to Albany County Route 307, southeast along Route 307 to Route 85A, southwest along Route 85A to Route 85, south along Route 85 to Route 443, southeast along Route 443 to Albany County Route 301 at Clarksville, southeast along Route 301 to Route 32, south along Route 32 to Route 23 at Cairo, west along Route 23 to Joseph Chadderdon Road, southeast along Joseph Chadderdon Road to Hearts Content Road (Greene County Route 31),

southeast along Route 31 to Route 32, south along Route 32 to Greene County Route 23A, east along Route 23A to Interstate Route 87 (the NYS Thruway), south along Route 87 to Route 28 (Exit 19) near Kingston, northwest on Route 28 to Route 209, southwest on Route 209 to the New York-Pennsylvania boundary, southeast along the New York-Pennsylvania boundary to the New York-New Jersey boundary, southeast along the New York-New Jersey boundary to Route 210 near Greenwood Lake, northeast along Route 210 to Orange County Route 5, northeast along Orange County Route 5 to Route 105 in the Village of Monroe, east and north along Route 105 to Route 32, northeast along Route 32 to Orange County Route 107 (Quaker Avenue), east along Route 107 to Route 9W, north along Route 9W to the south bank of Moodna Creek, southeast along the south bank of Moodna Creek to the New Windsor-Cornwall town boundary, northeast along the New Windsor-Cornwall town boundary to the Orange-Dutchess County boundary (middle of the Hudson River), north along the county boundary to Interstate Route 84, east along Route 84 to the New York-Connecticut boundary, north along the New York-Connecticut boundary to the New York-Massachusetts boundary, north along the New York-Massachusetts boundary to the New York-Vermont boundary, north to the point of beginning.

Eastern Long Island Goose Area (NAP High Harvest Area): That area of Suffolk County lying east of a line extending due south from the New York-Connecticut boundary to the northernmost end of Roanoke Avenue in the Town of Riverhead, south on Roanoke Avenue (which becomes County Route 73) to State Route 25, west on Route 25 to Peconic Avenue, south on Peconic Avenue to County Route (CR) 104 (Riverleigh Avenue), south on CR 104 to CR 31 (Old Riverhead Road), south on CR 31 to Oak Street, south on Oak Street to Potunk Lane, then west on Stevens Lane, then south on Jessup Avenue (in Westhampton Beach) to Dune Road (CR 89), then due south to International waters.

Western Long Island Goose Area (NAP Low Harvest Area): The remainder of the Long Island Waterfowl Hunting Zone, excluding the Eastern Long Island Goose Area, as defined above.

South Goose Area: The remainder of New York State, excluding New York City.

Special Late Canada Goose Area: That area of Westchester County lying southeast of Interstate Route 95, and that area of Nassau and Suffolk Counties lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York-Connecticut boundary.

North Carolina

SJBP Hunt Zone: Includes the following counties or portions of counties: Anson, Cabarrus, Chatham, Davidson, Durham, Halifax (that portion east of NC 903), Montgomery (that portion west of NC 109), Northampton, Richmond (that portion south of NC 73 and west of U.S. 220 and north of U.S. 74), Rowan, Stanly, Union, and Wake.

RP Hunt Zone: Includes the following counties or portions of counties: Alamance, Alleghany, Alexander, Ashe, Avery, Beaufort, Bertie (that portion south and west of a line formed by NC 45 at the Washington Co. line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Bladen, Brunswick, Buncombe, Burke, Caldwell, Carteret, Caswell, Catawba, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford, Halifax (that portion west of NC 903), Harnett, Haywood, Henderson, Hertford, Hoke, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mecklenburg, Mitchell, Montgomery (that portion that is east of NC 109), Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Randolph, Richmond (all of the county with exception of that portion that is south of NC 73 and west of U.S. 220 and north of U.S. 74), Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey.

Northeast Hunt Unit: Includes the following counties or portions of counties: Bertie (that portion north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania

Resident Canada Goose Zone: All of Pennsylvania except for Crawford, Erie, and Mercer counties and the area east of route SR 97 from Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of U.S. Route 30, south of U.S. Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, south of I–80 to New Jersey State line).

SJBP Zone: Erie, Mercer, and Crawford Counties except for the Pymatuning Zone.

Pymatuning Zone: The area south of SR 198 from the Ohio State line to intersection of SR 18, SR 18 south to SR 618, SR 618 south to U.S. Route 6, U.S. Route 6 east to U.S. Route 322/SR 18, U.S. Route 322/SR 18 west to intersection of SR 3013, SR 3013 south to the Crawford/Mercer County line.

AP Zone: The area east of route SR 97 from Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of U.S. Route 30, south of U.S. Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, south of I–80 to New Jersey State line.

Rhode Island

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

Canada Goose Area: Statewide except for Clarendon County, that portion of Orangeburg County north of SC Highway 6, and that portion of Berkeley County north of SC Highway 45 from the Orangeburg County line to the junction of SC Highway 45 and State Road S–8–31 and that portion west of the Santee Dam.

Vermont

Same zones as for ducks.

Virginia

AP Zone: The area east and south of the following line—the Stafford County line from the Potomac River west to Interstate 95 at Fredericksburg, then south along Interstate 95 to Petersburg, then Route 460 (SE) to City of Suffolk, then south along Route 32 to the North Carolina line.

SJBP Zone: The area to the west of the AP Zone boundary *and* east of the following line: the ''Blue Ridge'' (mountain spine) at the West Virginia-Virginia Border (Loudoun County-Clarke County line) south to Interstate 64 (the Blue Ridge line follows county borders along the western edge of Loudoun-Fauquier-Rappahannock-Madison-Greene-Albemarle and into Nelson Counties), then east along

Interstate Rt. 64 to Route 15, then south along Rt. 15 to the North Carolina line.

RP Zone: The remainder of the State west of the SJBP Zone.

Back Bay Area: The waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia

Same zones as for ducks.

Mississippi Flyway

Alabama

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas

Northwest Zone: Baxter, Benton, Boone, Carroll, Conway, Crawford, Faulkner, Franklin, Johnson, Logan, Madison, Marion, Newton, Perry, Pope, Pulaski, Searcy, Sebastian, Scott, Van Buren, Washington, and Yell Counties.

Illinois

Same zones as for ducks.

Indiana

Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, LaPorte, Starke, Elkhart, and Steuben Counties, and that portion of the Jasper-Pulaski Fish and Wildlife Area in Pulaski County.

Indiana Late Canada Goose Season Zone: That part of the state encompassed by the following counties: Steuben, Lagrange, Elkhart, St. Joseph, La Porte, Starke, Marshall, Kosciusko, Noble, De Kalb, Allen, Whitley, Huntington, Wells, Adams, Boone, Hamilton, Madison, Hendricks, Marion, Hancock, Morgan, Johnson, Shelby, Vermillion, Parke, Vigo, Clay, Sullivan, and Greene.

Iowa

North Zone: That portion of the State north of U.S. Highway 20.

South Zone: The remainder of Iowa.

Kentucky

Western Zone: That portion of the State west of a line beginning at the Tennessee State line at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana State line.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Michigan

MVP–Upper Peninsula Zone: The MVP–Upper Peninsula Zone consists of the entire Upper Peninsula of Michigan.

MVP–Lower Peninsula Zone: The MVP–Lower Peninsula Zone consists of the area within the Lower Peninsula of Michigan that is north and west of the point beginning at the southwest corner of Branch county, north continuing along the western border of Branch and Calhoun counties to the northwest corner of Calhoun county, then east to the southwest corner of Eaton county, then north to the southern border of Ionia county, then east to the southwest corner of Clinton county, then north along the western border of Clinton County continuing north along the county border of Gratiot and Montcalm counties to the southern border of Isabella county, then east to the southwest corner of Midland county, then north along the west Midland county border to Highway M–20, then easterly to U.S. Highway 10, then easterly to U.S. Interstate 75/U.S. Highway 23, then northerly along I–75/U.S. 23 and easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone: The rest of the State, that area south and east of the boundary described above.

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly (mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons:

Southern Michigan Late Season Canada Goose Zone: Same as the South Duck Zone excluding Tuscola/Huron Goose Management Unit (GMU), Allegan County GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota

West Zone: That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa State line, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota State line.

West Central Zone: That area encompassed by a line beginning at the

intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Special Canada Goose Seasons:

Southeast Zone: That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Missouri

Same zones as for ducks but in addition:

Middle Zone

Southeast Zone: That portion of the State encompassed by a line beginning at the intersection of Missouri Highway (MO) 34 and Interstate 55 and extending south along I–55 to U.S. Highway 62, west along U.S. 62 to MO 53, north along MO 53 to MO 51, north along MO 51 to U.S. 60, west along U.S. 60 to MO 21, north along MO 21 to MO 72, east along MO 72 to MO 34, then east along MO 34 to I–55.

Ohio

Same zones as for ducks but in addition:

North Zone

Lake Erie SJBP Zone: That portion of the State encompassed by a line beginning in Lucas County at the Michigan State line on I–75, and extending south along I–75 to I–280, south along I–280 to I–80, east along I–80 to the Pennsylvania State line in Trumbull County, north along the Pennsylvania State line to SR 6 in Ashtabula County, west along SR 6 to the Lake/Cuyahoga County line, north along the Lake/Cuyahoga County line to the shore of Lake Erie.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion, and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama State line to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky State line.

Wisconsin

Same zones as for ducks but in addition:

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to Interstate Highway 39, southerly along Interstate Highway 39 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly along Poplar Grove Road to Rockea Road, southerly along Rockea Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois State line and Interstate Highway 90 and extending north along I–90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois State line.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All areas in Boulder, Larimer and Weld Counties from the Continental Divide east along the Wyoming border to U.S. 85, south on U.S. 85 to the Adams County line, and all lands in Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Gilpin, and Jefferson Counties.

North Park Area: Jackson County.

South Park and San Luis Valley Area: All of Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Rio Grande and Teller Counties, and those portions of Saguache, Mineral and Hinsdale Counties east of the Continental Divide.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: That portion of the State east of Interstate Highway 25.

Nebraska

Dark Geese

Niobrara Unit: That area contained within and bounded by the intersection of the South Dakota State line and the Cherry County line, south along the Cherry County line to the Niobrara River, east to the Norden Road, south on the Norden Road to U.S. Hwy 20, east along U.S. Hwy 20 to NE Hwy 137, north along NE Hwy 137 to the Niobrara River, east along the Niobrara River to the Boyd County line, north along the Boyd County line to the South Dakota State line. Where the Niobrara River forms the boundary, both banks of the river are included in the Niobrara Unit.

East Unit: That area north and east of U.S. 281 at the Kansas-Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14 north to NE 91, east to U.S. 275, south to U.S. 77, south to NE 91, east to U.S. 30, east to Nebraska-Iowa State line.

Platte River Unit: That area south and west of U.S. 281 at the Kansas-Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14, north to NE 91, west along NE 91 to NE 11, north to the Holt County line, west along the northern border of Garfield, Loup, Blaine and Thomas Counties to the Hooker County line, south along the Thomas-Hooker County lines to the McPherson County line, east along the south border of Thomas County to the western line of Custer County, south along the Custer-Logan County line to NE 92, west to U.S. 83, north to NE 92, west to NE 61, north along NE 61 to NE 2, west along NE 2 to the corner formed by Garden-Grant-Sheridan Counties, west along the north border of Garden, Morrill, and Scotts Bluff Counties to the intersection of the Interstate Canal, west to Wyoming State line.

North-Central Unit: The remainder of the State.

Light Geese

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and U.S. 30 at Grand Island, north and east on U.S. 30 to NE 14, south to NE 66, east to U.S. 81, north to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion)

Dark Geese

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia Counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

South Dakota

Canada Geese

Unit 1: Remainder of South Dakota.

Unit 2: Bon Homme, Brule, Buffalo, Charles Mix, Custer east of SD Hwy 79 and south of French Creek, Dewey south of U.S. Hwy 212, Fall River east of SD Hwy 71 and U.S. Hwy 385, Gregory, Hughes, Hyde south of U.S. Hwy 14, Lyman, Potter west of U.S. Hwy 83, Stanley, and Sully Counties.

Unit 3: Bennett County.

Texas

Northeast Goose Zone: That portion of Texas lying east and north of a line beginning at the Texas-Oklahoma border at U.S. 81, then continuing south to Bowie and then southeasterly along U.S. 81 and U.S. 287 to I–35W and I–35 to the juncture with I–10 in San Antonio, then east on I–10 to the Texas-Louisiana border.

Southeast Goose Zone: That portion of Texas lying east and south of a line beginning at the International Toll Bridge at Laredo, then continuing north following I–35 to the juncture with I–10 in San Antonio, then easterly along I–10 to the Texas-Louisiana border.

West Goose Zone: The remainder of the State.

Wyoming (Central Flyway Portion)

Dark Geese

Area 1: Converse, Hot Springs, Natrona, and Washakie Counties, and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 2: Albany, Campbell, Crook, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties, and that portion of Carbon County east of the Continental Divide; that portion of Park County west of the Shoshone National Forest boundary, and that portion of Park County north of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 3: Goshen and Platte Counties.

Area 4: Big Horn and Fremont Counties.

Pacific Flyway

Arizona

North Zone: Game Management Units 1–5, those portions of Game Management Units 6 and 8 within Coconino County, and Game Management units 7, 9, and 12A.

South Zone: Those portions of Game Management Units 6 and 8 in Yavapai County, and Game Management Units 10 and 12B–45.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and

Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Imperial County Special Management Area: The area bounded by a line beginning at Highway 86 and the Navy Test Base Road; south on Highway 86 to the town of Westmoreland; continue through the town of Westmoreland to Route S26; east on Route S26 to Highway 115; north on Highway 115 to Weist Rd.; north on Weist Rd. to Flowing Wells Rd.; northeast on Flowing Wells Rd. to the Coachella Canal; northwest on the Coachella Canal to Drop 18; a straight line from Drop 18 to Frink Rd.; south on Frink Rd. to Highway 111; north on Highway 111 to Niland Marina Rd.; southwest on Niland Marina Rd. to the old Imperial County boat ramp and the water line of the Salton Sea; from the water line of the Salton Sea, a straight line across the Salton Sea to the Salinity Control Research Facility and the Navy Test Base Road; southwest on the Navy Test Base Road to the point of beginning.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

North Coast Special Management Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Special Management Area (West): That area bounded by a line beginning at Willows south on I–5 to Hahn Road; easterly on Hahn Road and the Grimes–Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

Colorado (Pacific Flyway Portion)

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral, and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific–Flyway Portion of Colorado.

Idaho

Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I–84, and south and west of I–84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Cassia except the Minidoka National Wildlife Refuge; those portions of Elmore south of I–84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Blaine; Camas; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada

Lincoln Clark County Zone: All of Lincoln and Clark Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon

Southwest Zone: Those portions of Douglas, Coos, and Curry Counties east of Highway 101, and Josephine and Jackson Counties.

South Coast Zone: Those portions of Douglas, Coos, and Curry Counties west of Highway 101.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to Milepost 19, north to the intersection of the Benton and Lincoln County line, north along the western boundary of Benton and Polk Counties to the southern boundary of Tillamook County, west along the Tillamook County boundary to the Pacific Coast.

Lower Columbia/N. Willamette Valley Management Area: Those portions of Clatsop, Columbia, Multnomah, and Washington Counties within the Northwest Special Permit Zone.

Tillamook County Management Area: All of Tillamook County is open to goose hunting except for the following area—beginning in Cloverdale at Hwy 101, west on Old Woods Rd to Sand Lake Rd at Woods, north on Sand Lake Rd to the intersection with McPhillips Dr, due west (~200 yards) from the intersection to the Pacific coastline, south on the Pacific coastline to Neskowin Creek, east along the north shores of Neskowin Creeks and then Hawk Creeks to Salem Ave, east on Salem Ave in Neskowin to Hawk Ave, east on Hawk Ave to Hwy 101, north on Hwy 101 at Cloverdale, point of beginning.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone and all of Lincoln County.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler,

Grant, Baker, Union, and Wallowa Counties.

Harney, Lake, and Malheur County Zone: All of Harney, Lake, and Malheur Counties.

Klamath County Zone: All of Klamath County.

Utah

Northern Utah Zone: All of Cache and Rich Counties, and that portion of Box Elder County beginning at I–15 and the Weber-Box Elder County line; east and north along this line to the Weber-Cache County line; east along this line to the Cache-Rich County line; east and south along the Rich County line to the Utah-Wyoming State line; north along this line to the Utah-Idaho State line; west on this line to Stone, Idaho-Snowville, Utah road; southwest on this road to Locomotive Springs Wildlife Management Area; east on the county road, past Monument Point and across Salt Wells Flat, to the intersection with Promontory Road; south on Promontory Road to a point directly west of the northwest corner of the Bear River Migratory Bird Refuge boundary; east along an imaginary line to the northwest corner of the Refuge boundary; south and east along the Refuge boundary to the southeast corner of the boundary; northeast along the boundary to the Perry access road; east on the Perry access road to I–15; south on I–15 to the Weber-Box Elder County line.

Remainder-of-the-State Zone: The remainder of Utah.

Washington

Area 1: Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone): Clark County, except portions south of the Washougal River; Cowlitz, and Wahkiakum Counties.

Area 2B (SW Quota Zone): Pacific County.

Area 3: All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5: All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Brant

Pacific Flyway

California

North Coast Zone: Del Norte, Humboldt and Mendocino Counties.

South Coast Zone: Balance of the State.

Washington

Puget Sound Zone: Skagit County.

Coastal Zone: Pacific County.

Swans

Central Flyway

South Dakota:

Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I–15, north of I–80 and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary, then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge, then west along a line to Promontory Road, then north on Promontory Road to the intersection of SR 83, then north on SR 83 to I–84, then north and west on I–84 to State Hwy 30, then west on State Hwy 30 to the Nevada–Utah State line, then south on the Nevada–Utah State line to I–80.

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Federal Register

Thursday,
September 20, 2007

Part VII

Department of Justice

Drug Enforcement Administration

Established Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2007 and 2008; Notices

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–300F]

Established Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2007

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of assessment of annual needs for 2007.

SUMMARY: This notice establishes the initial year 2007 assessment of annual needs for certain List I chemicals in accordance with the Combat Methamphetamine Epidemic Act of 2005 (CMEA), enacted on March 9, 2006.

DATES: *Effective Date:* September 20, 2007.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background and Legal Authority

Section 713 of the CMEA (Title VII of Pub. L 109–177) amended section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requiring that the Attorney General establish quotas to provide for the annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine. Further, section 715 of the CMEA amended 21 U.S.C. 952 by adding ephedrine, pseudoephedrine, and phenylpropanolamine to the existing language concerning importation of controlled substances.

The 2007 assessment of annual needs represents those quantities of ephedrine, pseudoephedrine, and phenylpropanolamine which may be manufactured domestically and/or imported into the United States in 2007 to provide adequate supplies of each chemical for: the estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks.

This responsibility for establishing the assessment has been delegated to the Administrator of the DEA by 28 CFR section 0.100. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to 28 CFR section 0.104.

On October 19, 2006, a notice entitled, ''Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2007: Proposed'' was published in the **Federal Register** (71 FR 61801). This notice proposed the initial 2007 assessment of annual needs for ephedrine (for sale), ephedrine (for conversion), pseudoephedrine (for sale), phenylpropanolamine (for sale) and phenylpropanolamine (for conversion). All interested persons were invited to comment on or object to the proposed assessments on or before December 4, 2006.

Comments Received

DEA received eight comments from five interested parties during the comment period. Two comments were received from two DEA registered chemical importers; one comment was received from a DEA registered chemical manufacturer; two comments were received from an association representing over-the-counter (OTC) manufacturers, distributors and retailers; and three comments were received from a law firm representing an OTC product manufacturer. After the comment period closed, DEA received an additional comment from the above-mentioned association. All comments received during the comment period are summarized here and discussed further below.

One of the five commenters supported the DEA's proposal. This commenter, one of the DEA registered chemical importers, stated that DEA's proposed assessment of annual needs for pseudoephedrine and ephedrine was ''reasonable.'' Additionally, the commenter requested that the DEA consider providing ''regulatory relief'' with regard to the new import provisions by minimizing the amount of information that will be required on the import applications and relying more heavily on the requirements under the ''spot market'' provision to ensure that these substances are imported for legitimate needs. Since the information collected as part of the quota provisions and import applications is not the subject of this notice, the latter part of this comment was not considered by DEA.

Three of the five commenters raised concerns regarding DEA's proposal. Two of these commenters raised concerns regarding the assessment for ephedrine while one raised concerns regarding the assessment for phenylpropanolamine (for conversion). These commenters included a DEA-registered manufacturer that imports phenylpropanolamine, an association representing OTC manufacturers, distributors, and retailers, and a law firm representing an OTC product manufacturer.

The fifth commenter requested that DEA consider its proposed individual requirement for ephedrine in fixing the final assessment of annual needs.

DEA did not receive any comments on its proposed assessment of annual needs for ephedrine (for conversion) and phenylpropanolamine (for sale) and is therefore finalizing these values as proposed. The assessment of annual needs for phenylpropanolamine (for conversion), ephedrine (for sale) and pseudoephedrine (for sale) are discussed below within the context of the comments received.

Comments Regarding DEA's Proposed Assessment for Phenylpropanolamine (for Conversion)

One commenter, a manufacturer that imports phenylpropanolamine, considered the proposed phenylpropanolamine (for conversion) assessment, i.e., the amount necessary for the manufacture of other substances, insufficient to meet its customers' needs. The commenter stated that phenylpropanolamine, and its isomers, are used as chiral agents in numerous chemical syntheses, a factor that the commenter believed DEA had not considered in its original proposal. The commenter stated that the synthesized drugs are used in drug products administered to patients with Acquired Immune Deficiency Syndrome (AIDS) and Attention Deficit Disorder (ADD). This commenter believed that these uses are probably the largest use of phenylpropanolamine.

DEA had considered in its proposal the amount of phenylpropanolamine it believed was necessary for the manufacture of ADD medicines, but had not considered the chemical's use in the manufacture of drugs utilized in the treatment of AIDS. After consideration of this comment along with additional information obtained by DEA in connection with this comment, DEA has adjusted its assessment for phenylpropanolamine (for conversion) from 6,240 kg to 85,470 kg.

Comments Regarding DEA's Proposed Assessments for Ephedrine (for Sale) and Pseudoephedrine (for Sale)

Two commenters, the association representing OTC manufacturers, distributors, and retailers, and the law firm representing an OTC product manufacturer, indicated their belief that the proposed ephedrine assessment was insufficient to meet market demands for ephedrine-containing OTC products. The association also questioned the

sufficiency of the assessment for pseudoephedrine.

The law firm representing an OTC product manufacturer submitted three individual comments during the comment period. The first comment requested a 30-day extension of the comment period. The commenter stated that they were unable to locate the IMS Health Government Solutions (IMS) report on the DEA Diversion Web site. The commenter was contacted by DEA and advised as to where the IMS report was located; upon locating the report, the commenter withdrew their request for a 30-day extension. The second comment was another request for a 30-day extension of the comment period deadline in order to compile and submit to DEA a report from ''* * * experts in medicine, economics, and DEA/law enforcement to assess the impact of the proposed quota on medical, industrial, scientific and other legitimate demand for the two chemical substances.'' The commenter submitted the report to DEA in its third comment. The commenter recommended ''withdrawal of the proposed 2007 assessment due to its inaccuracy and incompleteness.'' The commenter requested that DEA issue a new notice. The comment made the following conclusions: (1) That the IMS report was flawed because it excluded and underestimated ''legitimate demand for ephedrine sold in over-the-counter (OTC) drugs for respiratory ailments via convenience stores''; (2) ''The underestimation of legitimate medical need will lead to ephedrine quota levels beneath those necessary to ensure adequate supplies of ephedrine to treat respiratory ailments''; (3) ''The exclusion of convenience stores from the IMS calculus and any resulting deprivation of supply to satisfy legitimate demand in those stores will imperil the health and safety of Americans with respiratory ailments, resulting in increased hospitalization and possibly deaths due to a lack of ready access in moments of critical need''; (4) ''* * * the prejudicial exclusion of convenience store demand from the 2007 Annual Needs estimate not only reduces supply beneath safe levels but also creates an anti-competitive market bias in favor of pharmacies over convenience stores to the economic and physical detriment of all with legitimate medical needs.'' The commenter also stated that IMS did not conduct any ''sensitivity tests, assessments of bias, or estimates of precision related to use of surveys that are critical to estimates of certain segments of the legitimate medical use market, such as convenience stores.''

DEA notes that IMS completed a sensitivity analysis upon review of the comments submitted by this commenter. The results of this analysis and DEA's consideration of the results of that analysis are discussed below. IMS' final report is available on the Office of Diversion Control's Web site (*http://www.deadiversion.usdoj.gov*).

The association representing OTC manufacturers, distributors, and retailers provided two comments to the docket during the comment period. The commenter stated that the IMS report did not ''properly document data from the convenience store segment.'' The commenter noted its concern that DEA has ''narrowly defined 'medical need' '' for preparations containing these List I chemicals, specifically ephedrine. The commenter stated that it had commissioned ''a study by an outside economic consulting firm to provide the DEA with substantive information that would help DEA produce a more accurate and substantive estimate of ephedrine needs assessment for 2007.'' The comment included a request for an extension of time which was not granted. The study was submitted to both DEA and IMS after the comment period had closed.

In connection with the concerns raised by these two commenters that the preliminary IMS study did not adequately address sales of ephedrine-based OTC drug products through the convenience store channel of distribution, DEA notes that its contract with IMS had two distinct phases. Phase I, which was completed prior to publication of the proposed assessment of annual needs, involved a preliminary assessment of the medical use of ephedrine and pseudoephedrine and a written summary of the methodology it used to develop the estimates. This information was made available for review by the public when the DEA published the ''*Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2007: Proposed*'' (71 FR 61801). The second phase of DEA's contract involved IMS' development of a final estimate which was developed by IMS after consideration of all available information, including: comments received from the public during the comment period, the study submitted directly to IMS by the association representing OTC manufacturers, distributors and retailers, updated information from the data sources used by IMS to compile the initial estimates, and other available information on the sales of OTC drug products through various distribution channels. The final report is discussed below and is available on DEA's Office of Diversion Control Web site, *http://www.deadiversion.usdoj.gov.*

Report Prepared by IMS Health

As discussed in its October 19, 2006, proposed Assessment of Annual Needs, since the manufacture and importation of ephedrine, pseudoephedrine, and phenylpropanolamine were not previously regulated through the establishment of an assessment of annual needs, DEA obtained assistance from a private independent contractor, IMS, to develop the initial estimate of the medical needs of the United States of ephedrine and pseudoephedrine.

IMS' estimates of medical needs for ephedrine and pseudoephedrine were derived from data the company routinely collects and offers to customers to understand the pharmaceutical market. For this analysis, IMS utilized the following types of data: (1) Sales to retail establishments (including pharmacies), (2) sales by retail establishments to patients, and (3) medical insurance claims. IMS' estimates of medical needs were intended to encompass only those products containing either ephedrine or pseudoephedrine, whether requiring a prescription or available over-the-counter. The estimates of use encompassed those products containing ephedrine and pseudoephedrine which are lawfully marketed under the Federal Food, Drug and Cosmetic Act. As noted previously, IMS did not examine estimates for phenylpropanolamine.

The CSA requires that DEA establish quotas for ephedrine, pseudoephedrine, and phenylpropanolamine to meet the estimated medical, scientific, research, and industrial needs of the United States, lawful export requirements, and maintenance of reserve stocks. Accordingly, DEA requested that IMS determine the amount of ephedrine and pseudoephedrine necessary to meet the estimated medical needs of the United States. DEA and IMS agreed that looking at sales of prescription and OTC drug products containing these list I chemicals through all distribution channels alone would not be an appropriate proxy from which to derive an estimate of what IMS describes in its report as the ''legitimate medical use'' because this approach would have the unwanted effect of including amounts of ephedrine and pseudoephedrine purchased for use in the clandestine manufacture of methamphetamine.

Therefore, IMS concluded that the best proxy for evaluating the estimated medical use for these chemicals, i.e., the alternate method that seeks to exclude

sales of ephedrine and pseudoephedrine-based products destined for clandestine methamphetamine production in the United States, would involve evaluating the changes (increases or decreases) in sales of prescription and OTC products containing these List I chemicals which have resulted from various state initiatives aimed at imposing restrictions on the retail sales of OTC drug products containing these chemicals. These state-sponsored initiatives began as early as 2004. The requirements vary from state to state, but examples include: (1) Placing OTC products behind pharmacy counters, (2) restricting the quantity of OTC drug products that could be purchased by individuals, and (3) providing proof of identification at the time of purchase. Based on this analysis, IMS concluded that the median changes in OTC sales of ephedrine products were: 23.7 percent increase through retail channels (mass merchandisers, grocery stores, etc.) and a 45.2 percent decrease in ''other'' distribution channels (including gas station and convenience stores). For comparison, sales of OTC products containing pseudoephedrine decreased by 22 percent through retail distribution channels and also decreased by 10.8 percent through other distribution channels. Accordingly, these changes, along with the changes observed in the usage of prescription drug products containing ephedrine and pseudoephedrine, were applied across all data systems used in the IMS analysis.

Based on the comments analyzed by IMS, IMS completed a sensitivity analysis of their final estimates. IMS concluded that the estimated medical use for pseudoephedrine was ''very stable * * * differing from the simple average of the component final estimates by at most 7.7%.'' By contrast, however, the estimated medical use for ephedrine was ''relatively unstable, as the sensitivity estimates differ from the final estimate by as much as 46.5%.''

IMS' Medical Need Estimate for Pseudoephedrine and the DEA's Final 2007 Assessment of Annual Needs for Pseudoephedrine (for Sale)

In its final report, IMS concluded that the estimated medical need for pseudoephedrine decreased in all three models analyzed. The initial IMS report estimated that the medical need in the United States for pseudoephedrine was 350,700 kg and in the final report the medical need estimate was 280,268 kg. The results of the sensitivity analysis suggest that the pseudoephedrine medical need assessment was very stable from the simple average of the three component final estimates and, at most, differed by 7.7 percent. The decrease observed in IMS final estimate as compared with the preliminary estimate was due to a necessary adjustment resulting from IMS initially expressing its estimate (350,700 kg) in terms of the compound weight, e.g., pseudoephedrine hydrochloride, rather than expressing its estimate in terms of the weight of the molecule pseudoephedrine alone. Overall, this resulted in a correction down in the IMS estimate by approximately 20 percent.

Although IMS' final estimate is lower, DEA has concluded that the amount proposed would allow for sufficient inventory allowances to DEA registered manufacturers and importers of pseudoephedrine products and could account for any unexpected change (increase) in the use of pseudoephedrine that may result from changes in the acceptability of phenylephrine as a substitute for pseudoephedrine in many OTC cough and cold products currently on the market.

IMS' Medical Need Estimate for Ephedrine and the DEA's Final 2007 Assessment of Annual Needs for Ephedrine (for Sale)

As with the pseudoephedrine estimate, IMS based its preliminary ephedrine medical need estimate on the weights of the salt forms of ephedrine; this resulted in a necessary adjustment down by 20 percent for its final medical need estimate. Unlike the pseudoephedrine estimate which decreased in the final report, IMS' analysis of the data available resulted in an increase from 3,800 kg to 4,096 kg. Furthermore, the results of its sensitivity analysis concluded that the 4,096 kg medical need estimate was ''unstable'' as compared to the estimate for pseudoephedrine and that the sensitivity estimates differed from the final estimate by as much as 46.5 percent (range was 4,096 kg to 5,998 kg). The two factors principally responsible for the 46.5 percent range were: (1) The incorporation of estimated amounts of OTC products sold in convenience stores, which IMS concluded to be 7.7 percent, and (2) the incorporation of ''non-matched products,'' i.e., those products not originally confirmed to contain ephedrine or pseudoephedrine, into IMS' estimate.

Based on this analysis, DEA concludes that the proposed assessment of annual needs for ephedrine (for sale) was inadequate to meet the estimated medical, scientific, research, and industrial needs of the United States, lawful export requirements, and maintenance of reserve stocks. After considering IMS' final estimate of the medical need of ephedrine-based prescription and OTC products (5,998 kg), along with information DEA collects from DEA registered chemical exporters (through the DEA–486 Import/Export Declaration for Listed Chemicals), and amounts necessary to maintain reserve stocks, DEA has increased the ephedrine (for sale) assessment from 7,100 kg to 11,500 kg.

Conclusion

Therefore, under the authority vested in the Attorney General by section 306 of the CSA (21 U.S.C. 826), and delegated to the Administrator of the DEA by 28 CFR section 0.100, and redelegated to the Deputy Administrator pursuant to 28 CFR section 0.104, the Deputy Administrator hereby orders that the 2007 assessment of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in kilograms of anhydrous acid or base, be established as follows:

List I chemicals	Final year 2007 assessment of annual needs (kg)
Ephedrine (for sale)	11,500
Ephedrine (for conversion)	128,760
Pseudoephedrine (for sale)	511,100
Phenylpropanolamine (for sale)	5,545
Phenylpropanolamine (for conversion)	85,470

The Office of Management and Budget has determined that notices of quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have any federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601–612. The establishment of assessments of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine is mandated by law. The assessments are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements, and the establishment and maintenance of reserve stocks.

Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: September 13, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–18523 Filed 9–19–07; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–306P]

Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2008: Proposed

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed annual assessment of needs for 2008.

SUMMARY: This notice proposes the initial year 2008 assessment of annual needs for certain List I chemicals in accordance with the Combat Methamphetamine Epidemic Act of 2005 (CMEA), enacted on March 9, 2006. The Act required DEA to establish production quotas and import quotas for ephedrine, pseudoephedrine, and phenylpropanolamine. This was done to prevent the illicit use of these three chemicals in the clandestine manufacture of methamphetamine. The enactment of the CMEA places additional regulatory controls upon the manufacture, distribution, importation, and exportation of the three List I chemicals.

DATES: Written comments or objections must be postmarked, and electronic comments must be sent, on or before October 11, 2007.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–306'' on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov.* DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 713 of the Combat Methamphetamine Epidemic Act of 2005 (Title VII of Pub. L. 109–177) (CMEA) amended section 306 of the Controlled Substances Act (CSA) (21 U.S.C. section 826) by adding ephedrine, pseudoephedrine, and phenylpropanolamine to existing language to read as follows: ''The Attorney General shall determine the total quantity and establish production quotas for each basic class of controlled substance in schedules I and II and for ephedrine, pseudoephedrine, and phenylpropanolamine to be manufactured each calendar year to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks.'' Further, section 715 of CMEA amended 21 U.S.C. 952 ''Importation of controlled substances'' by adding the same List I chemicals to the existing language in paragraph (a), and by adding a new paragraph (d) to read as follows:

(a) Controlled substances in schedule I or II and narcotic drugs in schedule III, IV, or V; exceptions

It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of subchapter I of this chapter, or any narcotic drug in schedule III, IV, or V of subchapter I of this chapter, or ephedrine, pseudoephedrine, and phenylpropanolamine, except that—

(1) Such amounts of crude opium, poppy straw, concentrate of poppy straw, and coca leaves, and of ephedrine, pseudoephedrine, and phenylpropanolamine, as the Attorney General finds to be necessary to provide for medical, scientific, or other legitimate purposes, and

* * * * *

(d)(1) With respect to a registrant under Section 958 who is authorized under Subsection (a)(1) to import ephedrine, pseudoephedrine, or phenylpropanolamine, at any time during the year the registrant may apply for an increase in the amount of such chemical that the registrant is authorized to import, and the Attorney General may approve the application if the Attorney General determines that the approval is necessary to provide for medical, scientific, or other legitimate purposes regarding the chemical.

Editor's Note: This excerpt of the amendment is published for the convenience of the reader. The official text is published at 21 U.S.C. 952(a) and (d)(1).

The responsibility for establishing the assessment of annual needs has been delegated to the Administrator of the DEA by 28 CFR section 0.100. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to 28 CFR section 0.104.

The proposed year 2008 assessment of annual needs represents those quantities of ephedrine, pseudoephedrine, and phenylpropanolamine which may be manufactured domestically and/or imported into the United States to provide adequate supplies of each chemical for: The estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks.

Pursuant to 21 CFR part 1315, the Deputy Administrator of the DEA will, in early 2008, adjust the assessment of annual needs and individual importing and manufacturing quotas allocated for the year based upon 2007 year-end inventory and actual 2007 disposition data supplied by quota recipients for ephedrine, pseudoephedrine, and phenylpropanolamine.

The Deputy Administrator hereby proposes that the year 2008 assessment

of annual needs for the following List I chemicals, expressed in kilograms of anhydrous base or acid, be established as follows:

List I chemicals	Proposed year 2008 assessment of annual needs [kg]
Ephedrine (for sale)	11,500
Ephedrine (for conversion)	128,760
Pseudoephedrine (for sale)	511,100
Phenylpropanolamine (for sale)	5,545
Phenylpropanolamine (for conversion)	85,470

Ephedrine (for conversion) refers to the industrial use of ephedrine, i.e., that which will be converted to pseudoephedrine. Phenylpropanolamine (for conversion) refers to the industrial use of phenylpropanolamine, i.e., that which will be converted to drug products administered to patients with Acquired Immune Deficiency Syndrome and Attention Deficit Disorder. The ''for sale'' assessments refer to the amount of ephedrine, pseudoephedrine, and phenylpropanolamine intended for ultimate use in products containing these List I chemicals.

All interested persons are invited to submit their comments in writing or electronically regarding this proposal following the procedures in the **ADDRESSES** section of this document. A person may object to or comment on the proposal relating to any of the above-mentioned chemicals without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that notices of quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601–612. The establishment of the assessment of annual needs for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine is mandated by law.

The assessments are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements, and the establishment and maintenance of reserve stocks. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: September 13, 2007.

Michele M. Leonhart,

Deputy Administrator.

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Honest Leadership and Open Government Act of 2007 (Sept. 14, 2007; 121 Stat. 735)

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