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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3

Debt Management

AGENCY: Office of the Secretary, USDA.

ACTION: Final Rule.

SUMMARY: The United States Department of Agriculture (USDA) amends its regulations that govern the management of debts owed to it by program participants and other debtors to implement the Debt Collection Improvement Act of 1996 (DCIA) and the revised Federal Claims Collection Standards. The changes will affect USDA requirements for collection and settlement of debts, including administrative offset of eligible payments, and referral to the Department of the Treasury (Treasury) for collection.

DATES: This rule is effective February 1, 2008.

FOR FURTHER INFORMATION CONTACT: Dale Theurer, Credit, Travel, and Grants Policy Division, Office of the Chief Financial Officer, Department of Agriculture, Mail Stop 9010, Room 3417 South, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720–1167. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is not a significant regulatory action as defined in Executive Order 12866.

Regulatory Flexibility Act

USDA certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96–354, as amended (5 U.S.C. 601 *et seq.*). No comments from small entities were received on the proposed rule. This regulation will not impose significant costs on small entities because this regulation only impacts small entities who receive payments from USDA agencies and who are delinquent on debts owed to USDA agencies.

Executive Order 12988

The rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws that are inconsistent with its provisions. Before a judicial action may be brought concerning this rule or action taken under this rule, all administrative remedies must be exhausted.

Unfunded Mandates

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

Paperwork Reduction Act

USDA has determined that the provisions of the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. 3501, *et seq.*, do not apply to any collections of information contained in this rule because any such collections of information are made during the conduct of administrative action taken by an agency against specific individuals or entities. 5 CFR 1320.4(a)(2).

Background and Purpose

On November 7, 2001, USDA published an advanced notice of proposed rulemaking (66 FR 56247) for revision of the USDA debt management regulations, 7 CFR part 3, to reflect promulgation of the revised Federal Claims Collection Standards (FCCS) and to incorporate other USDA specific changes with respect to collection of debt by administrative offset. No comments were received on this notice. On May 30, 2003, USDA published a proposed rule to revise 7 CFR part 3.

USDA received comments from four groups in response to the proposed rule: two from USDA agencies, one from a State, and one from an organization representing grassroots farm and rural advocacy organizations. Changes made to the proposed rule reflected in the final rule and responses to the comments are as follows.

Section 3.1

A new paragraph (c) is added to section 3.1 to cover two types of debts the collection of which are not subject to these regulations. The first is the collection of debts owed by USDA employees for delinquent or improper charges under their government travel card accounts. Collection of these debts is provided for by separate statutory procedures. The Travel and Transportation Reform Act provides guidelines for deduction of disposable pay from a USDA employee to satisfy a debt owed by the employee to a private contractor, in this instance the travel card contractor. However, if the employee disputes the debt, the procedures for commercial garnishment of Federal employees specified in 5 U.S.C. 5520a, as implemented at 5 CFR part 582, must be followed.

The second type is collection of debts under the Food Stamp Program. One commenter, a state Department of Health and Welfare, noted the difficulties in applying these debt collection procedures to debts owed by individuals under the Food Stamp Program for overpayments. While debts owed under the Food Stamp Program are subject to collection under the DCIA, additional provisions of the Food Stamp Act govern the collection of these debts. The collection of Food Stamp Program debts owed by individual recipients is not covered by this rule and instead will be covered by the regulations at 7 CFR 273.18.

However, the commenter cast its question in terms of whether the proposed regulations would apply to State agencies, while the substance of its comments noted the problems of applying these regulations to collection of debts owed by individual Food Stamp Program recipients. While the final rule is revised to reflect that it does not apply to individual Food Stamp Program recipients, it will continue to apply to States for debts otherwise owed

by the States as States under the Food Stamp Program, as States are included in the definition of ''debtor'' in section 3.3(h). These procedures, as applicable to States, will be complementary to any specific procedures for the collection of State debts (as well as those of Food Stamp retailers) provided in the Food Stamp Act, as permitted by § 3.1(a)(2) and 3.1(b)(2).

One commenter objected to the removal from 7 CFR part 3 of the debt collection procedures under the Act of December 20, 1944 (12 U.S.C. 1150, *et seq.*) (1944 Act). As indicated in the preamble to the proposed rule, it is unlikely that collection under that Act will ever be initiated.

The 1944 Act authorizes the Secretary to compromise certain debts of $1,000 or less if certain factors are not met, including that ''the debtor is unable to pay said indebtedness in full and has no reasonable prospect of being able to do so'' (12 U.S.C. 1150(2)). This criterion is similar to that in the FCCS provisions that allow an agency to compromise a claim of $100,000 or less: ''[t]he debtor is unable to pay the full amount in a reasonable time'' (31 CFR 902.2(a)(1)). Accordingly, USDA has determined that the minimum requirement of the 1944 Act will be met by application of the FCCS standards in any event and thus redundant regulations for the small debts covered by the 1944 Act are not required.

The 1944 Act further authorizes the Secretary to cancel debts of less than ten dollars in certain limited circumstances. *See* 12 U.S.C. 1150. Again, USDA has determined that application of the FCCS standards for compromise of debt at 31 CFR 902.2 would cover the same circumstances as set forth in the statute.

In any event, as noted in the preamble to the proposed rule, the authority to take action under the 1944 Act is reserved by the language of § 3.1(a)(2).

Section 3.2

One commenter suggested that the terms ''commercial debt'' and ''consumer debt'' should be defined with respect to reporting to credit-reporting bureaus. The commenter also suggested that commercial debt reporting also should be subject to due process requirements, which is addressed below. With respect to the definitions, USDA has relied upon the Financial Management Service, Department of Treasury ''Guide to the Federal Credit Bureau Program'' to define ''commercial debt'' as a debt arising from a business activity and a ''consumer debt'' as a debt arising from a personal activity. For example, a loan to a farmer to obtain additional land or equipment is considered a commercial loan whereas a loan to the same farmer to purchase a personal residence would be a consumer loan.

Two commenters urged USDA to use consistent deadlines and definition of ''day'' for purposes of calculating deadlines. The issue of consistent deadlines is addressed below, however ''day'' has been defined as a calendar day unless otherwise specified.

One commenter noted that the Farm Service Agency (FSA) has for many years defined a debt as ''delinquent'' as payments that have not been made 30 days after the due date. The commenter also noted that the preamble to the FCCS specifically provided that agencies may further define ''delinquency'' depending on specific agency program requirements and particular types of debt. Accordingly, the definition of ''delinquent'' has been amended to provide USDA agencies the flexibility to define ''delinquency'' as required by statute or regulation by adding the phrase ''or as otherwise defined by program specific statutes or regulations'' to the definition.

One commenter noted that a definition of an ''offset'' itself had been omitted. Accordingly, a definition of ''offset'' has been added, which necessitated the addition of definitions for the terms ''payee'' and ''person,'' and a revision of the definition of the term ''debtor.'' These definitions are drawn from the Treasury offset regulation definitions at 31 CFR 285.5.

One commenter suggested that a definition for ''cross-servicing'' be added to the regulation. ''Cross-servicing'' refers to the mandatory requirement in the DCIA to transfer to Treasury all debts that have been delinquent for 180 days or more so that Treasury can take action to collect the debt. It is a separate and distinct process from transfer to Treasury for collection pursuant to centralized administrative offset under Treasury Offset Program (TOP), and there are separate statutory requirements in the DCIA for transfer of delinquent debts to Treasury generally and transfer of debts for administrative offset. Treasury regulations cover the two mandatory transfer requirements in separate provisions. *See* 31 CFR 285.12 (cross-servicing) and 31 CFR 285.5 (centralized offset through TOP).

USDA understands that existence of two separate Treasury transfer mechanisms is confusing but it is required by law. Since ''cross-servicing'' is a description of a process, USDA declines to add a definition that would be nothing more than restating the cross-servicing process as already set out in § 3.31 of the proposed rule.

Section 3.11

Paragraph (b) has been reformatted to clarify when OGC consultation should be sought in determining whether to remove an item from a demand letter.

Section 3.31

Paragraph (a) is revised to delete the words ''or more'' after ''180 days'' because the statutory requirement is that debts be transferred after 180 days.

Section 3.41

Paragraph (b)(3) is revised to clarify that the authority for an agency to offset payments prior to notice and an opportunity to review applies only in the cases of non-centralized administrative offsets.

Paragraph (b)(4) provided that only one chance would be given for notice and review opportunities ''with respect to a particular debt.'' One commenter suggested that this be revised to state ''with respect to a particular delinquency'' so that if a borrower became delinquent on a debt once, received the notice, and became current on payments in response, and later then became delinquent again, the borrower would receive notice and opportunity for review again for the second delinquency. The language ''with respect to a particular debt'' comes directly from the FCCS; therefore, USDA declines to make the recommended change.

''Debt'' as defined in these regulations is not synonymous with ''loan.'' This comment, however, does suggest the need to clarify the USDA position with respect to due process procedures for delinquencies on loans paid on an installment basis, which is done with the addition of a new language in paragraph (b)(4). With respect to loans that are repaid on an installment basis, the borrower may go in and out of being current or delinquent on the loan many times over the life of the loan. Based on its consultation with the Financial Management Service of the Department of the Treasury regarding such installment loans, USDA takes the position that, at a minimum, only one opportunity for review need be provided for the first delinquent installment payment. For credit reporting, this means that the first notice may provide that the borrower will be reported as delinquent and provide due process review rights, but once the account is set up at the credit reporting agency, then USDA in the future simply may update the status of the account as to its current or delinquent status without further notice to the borrower. For referral to TOP, the

first notice may advise the borrower of referral of the delinquency, and all future delinquencies to TOP, with an opportunity for review but thereafter the borrower may be notified only that a delinquency has been referred to TOP without further opportunity for review. Any interest accrued or any installments coming due after the offset is initiated also would not require a new notice and opportunity to review. Program specific regulations may provide for more opportunities for due process review.

Section 3.44

Paragraph (d) generally is amended to reflect, in cases of centralized administrative offset, the additional warning notices required for offset of debts against recurring payments as required by 31 CFR 285.5(g)(1) and (2) and the priorities for collecting multiple debts owed by a payee, as required by 31 CFR 285.5(f)(3). Since these changes incorporate already applicable requirements in the Treasury regulations, no further comment is required.

Finally, there were a number of comments of a general nature about the proposed rule for which general modifications were made or for which the agency declined to modify the rule.

Words of Authority

One commenter noted that the proposed rule in many instances used the term ''should'' which was ambiguous as to its binding effect in contrast to the mandatory terms ''shall'' and ''must'' and the permissive term ''may.'' The final rule is modified accordingly to convert ''should'' into either mandatory or permissive terms, except where use of the term ''should'' is appropriate as encouraging agency action but not requiring it.

Consistent Deadlines

As noted above, the term ''day'' has been defined to be a calendar day and references to ''working'' days have been removed. The reference to ''working'' days was incorporated from the prior 7 CFR part 3, but there is no statutory or regulatory requirement for the term, therefore USDA has opted for consistent use of calendar days.

Two commenters noted that in some cases, deadlines were calculated from the date of a notice or request, and in others, from date of receipt of a notice or request. One commenter in particular questioned how USDA would determine the date of receipt. Accordingly, all deadlines have been changed to reflect calculation from the date of the notice or request except where the regulations of other agencies require calculation from the date of receipt of a notice or request. This is consistent with the position taken by the Departments of Justice and Treasury which concluded in promulgating the final FCCS that calculating the date from when the notice was sent met statutory and constitutional requirements.

The same two commenters also noted that there were 10, 20, 30, and 60 day deadlines used throughout the proposed rule which was confusing, and suggested that a consistent deadline should be used for simplicity.

A particular objection was raised to the difference between the 30-day deadline to seek review for noncentralized offset and the 60-day deadline set for centralized offset through referral to the TOP. This difference is necessitated by the different statutory and regulatory requirements that apply to these offsets. Any debt referred to TOP for administrative offset may be collected through a variety of tools, including offset of tax refunds. The tax refund statute requires that 60 days be allowed for a debtor to seek review of a tax refund offset. *See* 31 U.S.C. 3720A. On the other hand, the FCCS and the DCIA only require that agencies provide an opportunity for a debtor to seek administrative review, an opportunity to review records related to the debt, and an opportunity to enter into a written repayment agreement prior to centralized offset, without specifying any specific time period for such. *See* 31 CFR 901.3(b)(4)(ii)(B). Further, for noncentralized offset, the offset may even be initiated in certain circumstances prior to the review. *See* 31 CFR 901.3(b)(4)(iii)(C).

Without a mandatory prescribed time period for these opportunities, USDA simply incorporated the existing timelines from the current 7 CFR part 3 for these procedures. However, in light of the comment, USDA has changed the period for seeking inspection of records or proposing a repayment plan to 30 days from the date of the Notice of Intent to Collect by Administrative Offset to be consistent with the 30-day deadline for seeking administrative review of the proposed offset. However, USDA has retained the 60-day deadline for centralized offset and 30-day deadline for noncentralized offset. USDA does not see the need to extend the deadline for the internal offset of payments to its debtors to 60 days. The longer time period likely only would result in more payments being offset prior to the due process review in accordance with 31 CFR 901.3(b)(4)(iii)(C).

One commenter also noted that the proposed regulation presents a debtor with the dilemma of either seeking administrative review or filing a repayment plan, or doing both simultaneously. USDA has revised the final rule to allow a debtor 15 days to file a proposed repayment plan in the event of a decision adverse to a debtor or employee under subpart F or § 3.78.

Finally, USDA has retained the timelines for various actions in administrative hearings conducted under § 3.62. Those deadlines come from the existing provisions of part 3, have not proven problematic in the past, and preserve flexibility for the hearing official in conducting these information proceedings.

Statute of Limitations

One commenter requested that USDA clarify the application of the statute of limitations to collection by administrative offset by eliminating the qualifying language in § 3.40(e) and the reference to the Office of Personnel Management ''flagging'' civil service retirement and disability accounts prior to time those benefits begin. USDA declines to modify this language which is taken directly from the FCCS.

Review of Reporting of Commercial Debts

One commenter suggested that if agencies are going to report commercial debts to credit reporting agencies as recommended in § 3.12(e), then the pre-reporting requirements applicable to reporting of consumer debts as set forth in § 3.12 also should apply to commercial debt. These protections for consumer debt reporting are required by statute. USDA declines to apply those protections to commercial debts in the absence of any statute or regulation requiring Federal agencies to do so.

Loan Servicing Timetables

With respect to farm loan programs, one commenter contended that the primary purpose of the Farm Loan Program to serve as a lender of last resort and keep family farmers on the land was inconsistent with the increased general government interest in debt collection activities, and that the debt collection activities of USDA with respect to the Farm Loan Program should be secondary to that primary purpose. The commenter suggested that this did not require according complete precedence to loan making and loan servicing, but rather only coordination of debt collection with loan making and servicing activities. To that extent, the commenter suggested that the provisions of the proposed rule present

certain inefficiencies in its requirements for referral of debts to Treasury and reporting of delinquent debts (§§ 3.11(b)(7) and 3.31(c)) in light of the requirement for FSA issuance of a ''Notice of Availability of Loan Servicing Programs'' when a borrower is 90 days past due on scheduled loan payments or FSA finds the borrower in non-monetary default, to which the borrower has 60 days to respond. The commenter noted similar inefficiencies with respect to the reporting to credit reporting agencies (where applicable) (§ 3.12(a)(1)) and the charging of a 6 percent penalty on delinquent debts. Given that successful resolution of an application for loan servicing could moot these referrals, reports, and penalties, the commenter suggests that these provisions of the proposed rule be amended to state that implementation of these provisions will occur only after resolution of all pending loan servicing applications.

USDA declines to revise the rule as suggested. First, this rule is intended as a general rule for debt collection for the entire Department, not only farm loan programs. As noted in § 3.1(b)(2), USDA agencies may issue regulations to supplement these Department regulations in order to meet the specific requirements of individual programs. Second, § 3.31(b)(1) provides that referrals to Treasury for cross-servicing are not applicable to debts in litigation and foreclosure, and only legally enforceable debts may be referred to Treasury for centralized offset (*see* § 3.41(c) and 31 CFR 285.5(d)(1)). Third, FSA farm loan debt is commercial debt, not consumer debt, so the commenter's comments on § 3.12(a)(1) are inapplicable. Finally, the up to 6 percent penalty can be avoided if borrowers take action to bring their accounts current in a timely manner, or making necessary financial arrangements to avoid becoming delinquent.

Installment Loans

One commenter suggested, with particular reference to § 3.16, that the proposed rule's emphasis on collection of the entirety of a debt failed to distinguish between collecting the total amount of the debt from the collection of a missed installment payment. The comment apparently assumes that use of the word ''debt'' in the proposed regulation equates to an entire loan held by a borrower. As the definitions make clear, the term ''debt'' only refers to amounts determined to be due the United States, e.g., the amount of any given installment payment or payments due on a loan or loans at a given time, not the entire amount of a loan or loans. Further, the proposed regulation also covers debts owed USDA other than debts arising under loans, for example, civil penalties owed for program violations, disallowed costs under grants, etc. Accordingly, USDA declines to make the commenter's suggested change to the proposed rule to specify ''the debt or missed installment payment.''

3.16(c)—Additional Security

One commenter noted that most farm program loan debts already are secured, and thus no extra security would be needed to assure the government of adequate protection. Accordingly, the commenter recommended that the regulation should include guidance with respect to the types of cases in which taking additional security would be appropriate.

If a debt already is secured, then additional security would not be warranted. However, USDA declines to add further guidance as to when security should be obtained for unsecured deferred payments under an installment repayment plan in order to afford agencies maximum flexibility to require, or not require, such security in appropriate cases.

Review of Rejection of Repayment Plan

One commenter stated that the rejection by the agency of a repayment plan offered under § 3.42(b) seems to be a ''denial'' constituting an adverse agency decision appealable to the National Appeals Division (NAD), and that this should be stated in the final rule.

USDA disagrees with this comment. An offer of a repayment plan is an offer to the agency which the agency is not required to accept; it is not a request for a decision of the agency under agency program statutes and regulations that the agency has denied. Further, § 3.42(a) requires that agency decisions with respect to inspection or copying of records be consistent with 7 CFR part 1, subpart A, decisions under which expressly are not appealable to NAD. *See* 7 CFR 11.1 (definition of ''participant'').

Exempt Farm Program Payments

One commenter requested that the Secretary of Agriculture exempt all farm disaster payments from both referral to Treasury for cross-servicing and administrative offset, and that the final rule include a provision recognizing the authority of the Secretary of Agriculture to exempt other payments from administrative offset.

The commenter misinterprets the DCIA and fails to understand that offset and cross-servicing are two distinct processes. The Secretary of Agriculture has no authority to exempt debts from the statutory requirements for referral for cross-servicing or administrative offset or to exempt certain payments from offset. Only the Secretary of the Treasury has the authority to exempt certain payments from offset if offset would ''tend to interfere substantially with or defeat the purposes of the payment certifying agency's program.'' 7 U.S.C. 3716(c)(3). The Secretary of the Treasury exempts classes of payments for programs upon request by a payment agency only if the standards set by Treasury for such exemptions are met. *See* 31 CFR 285.5(e)(7). This trumps the current USDA debt collection regulations that allow USDA to make that determination. *See* 7 CFR 3.23(b)(3) (2005). Similarly, the Secretary of the Treasury may exempt any class of debt from referral for cross-servicing upon request of an executive agency (31 U.S.C. 3711(g)(2)(B)) in accordance with the criteria specified in 31 CFR 285.12(d)(5)).

List of Subjects in 7 CFR Part 3

Administrative practice and procedure, Agriculture, Claims, Debts, Garnishment of wages, Government employee, Hearing and appeal procedures, Pay Administration, Salaries, Wages.

■ For the reasons stated in the preamble, USDA amends 7 CFR part 3 as follows:

PART 3—DEBT MANAGEMENT

■ 1. The authority citation for 7 CFR part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3701, 3711, 3716–18, 3720B; 31 CFR parts 285 and 901–904.

■ 2. Subpart E is redesignated as subpart I.

■ 3. Subparts A through D are revised, and subparts E through H are added, to read as follows:

PART 3—DEBT MANAGEMENT

Subpart A—General

Sec.
3.1 Purpose and scope.
3.2 Authority.
3.3 Definitions.
3.4 Delegations of authority.

Subpart B—Standards for the Administrative Collection and Compromise of Claims

3.10 Aggressive agency collection activity.
3.11 Demand for payment.
3.12 Reporting of consumer debts.

3.13 Contracting with private collection contractors and with entities that locate and recover unclaimed assets. [Reserved]
3.14 Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges.
3.15 Liquidation of collateral.
3.16 Collection in installments.
3.17 Interest, penalties, and administrative costs.
3.18 Use and disclosure of mailing addresses.
3.19 Standards for the compromise of claims.
3.20 Standards for suspending or terminating collection activities.
3.21 Referrals of Debts to Justice.

Subpart C—Referral of Debts to Treasury

3.30 General requirements.
3.31 Mandatory referral for cross-servicing.
3.32 Discretionary referral for cross-servicing.
3.33 Required certification.
3.34 Fees.

Subpart D—Administrative Offset

3.40 Scope.
3.41 Procedures for notification of intent to collect by administrative offset.
3.42 Debtor rights to inspect or copy records, submit repayment proposals, or request administrative review.
3.43 Non-centralized administrative offset.
3.44 Centralized administrative offset.
3.45 USDA payment authorizing agency offset of pro rata share of payments due entity in which debtor participates.
3.46 Offset against tax refunds.
3.47 Offset against amounts payable from Civil Service Retirement and Disability Fund.

Subpart E—Administrative Wage Garnishment

3.50 Purpose.
3.51 Scope.
3.52 Definitions.
3.53 Procedures.

Subpart F—Administrative Reviews for Administrative Offset, Administrative Wage Garnishment, and Disclosure to Credit Reporting Agencies

3.60 Applicability.
3.61 Presiding employee.
3.62 Procedures.

Subpart G—Federal Salary Offset

3.70 Scope.
3.71 Definitions.
3.72 Coordinating offset with another Federal agency.
3.73 Determination of indebtedness.
3.74 Notice requirements before offset.
3.75 Request for a hearing.
3.76 Result if employee fails to meet deadlines.
3.77 Hearing.
3.78 Written decision following a hearing.
3.79 Review of USDA records related to the debt.
3.80 Written agreement to repay debts as alternative to salary offset.
3.81 Procedures for salary offset: when deductions may begin.
3.82 Procedures for salary offset: types of collection.
3.83 Procedures for salary offset: methods of collection.
3.84 Procedures for salary offset: imposition of interest, penalties, and administrative costs.
3.85 Non-waiver of rights.
3.86 Refunds.
3.87 Agency regulations.

Subpart H—Cooperation with the Internal Revenue Service

3.90 Reporting discharged debts to the Internal Revenue Service.

Subpart I—Adjusted Civil Monetary Penalties

3.91 Adjusted civil monetary penalties.

Authority: 5 U.S.C. 301; 31 U.S.C. 3701, 3711, 3716–18, 3720B; 31 CFR parts 285 and 901–904.

Subpart A—General

§ 3.1 Purpose and scope.

(a) *In general.* (1) The regulations in this part prescribe standards and procedures for use by USDA agencies in the collection, compromise, suspension, or termination of debts owed to the United States.

(2) The regulations in this part apply to all debts of the United States subject to collection by USDA agencies, except as otherwise specified in this part or by statute.

(3) The regulations in this part do not preclude the Secretary from collection, compromise, suspension, or termination of debts as otherwise authorized by law. In such cases the laws and implementing regulations that are specifically applicable to claims collection activities of a particular agency generally shall take precedence over this part.

(b) *Agency specific regulations.* (1) The regulations of this part shall apply to the Commodity Credit Corporation to the extent specified in 7 CFR part 1403.

(2) USDA agencies may issue regulations to supplement this part in order to meet the specific requirements of individual programs.

(c) *Inapplicability.* The regulations of this part shall not apply to:

(1) Collection of debts owed government travel card contractors by USDA employees;

(2) Collection of debts owed by individual Food Stamp Program recipients for whom debt collection procedures are provided under 7 CFR 273.18.

§ 3.2 Authority.

The regulations in this part are issued under the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (DCIA) (31 U.S.C. 3701 et seq.) and the Federal Claims Collection Standards issued pursuant to the DCIA by Treasury and Justice (31 CFR parts 901–904) that prescribe government-wide standards for administrative collection, compromise, suspension, or termination of agency collection action, disclosure of debt information to credit reporting agencies, referral of claims to private collection contractors for resolution, and referral to Justice for litigation to collect debts owed the government. The regulations under this part also are issued under Treasury regulations implementing DCIA (31 CFR part 285) and related statutes and regulations governing the offset of Federal salaries (5 U.S.C. 5512 and 5514; 5 CFR part 550, subpart K) and administrative offset of tax refunds (31 U.S.C. 3720A).

§ 3.3 Definitions.

For the purpose of this part, except as where otherwise specifically provided, the term or terms:

Agency means a subagency, office, or corporation within USDA subject to the authority or general supervision of the Secretary.

Centralized administrative offset means referral of a debt to the Treasury Offset Program (TOP) for offset of payments made to a debtor by Federal agencies other than USDA.

Claim and *debt* are synonymous and interchangeable, and refer to an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal agency.

Commercial debt means a debt arising out of a business activity.

Consumer debt means a debt arising out of a personal activity.

Contracting officer has the same meaning as in 41 U.S.C. 601.

Credit reporting agencies (also known as *credit bureaus*) means major consumer credit reporting agencies that have signed agreements with agencies to receive and integrate credit information (data) from voluntary subscribers (Federal agencies and private sector entities) into their respective databases for the purpose of generating credit reports for sale to purchasers of credit data.

Creditor agency means a Federal agency or USDA agency to which a debtor owes a debt, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to collection of the debt.

Day means calendar day unless otherwise specified.

Debt collection center means Treasury or other government agency or division,

designated by the Secretary of the Treasury with authority to collect debt on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

Debtor means a person who owes a delinquent, nontax debt to the United States.

Delinquent means a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made, or as otherwise defined by program specific statutes or regulations.

Federal agency means any other Department or entity within the Executive branch of the government.

Government or *Federal government* means the government of the United States, unless otherwise specified.

Internal administrative offset means a non-centralized administrative offset between a USDA creditor agency and a USDA payment authorizing agency.

Justice means the United States Department of Justice.

NAD means the USDA National Appeals Division.

Non-centralized administrative offset means an agreement between a USDA creditor agency and a payment authorizing agency to offset the payments made by the payment authorizing agency to satisfy a USDA debt. An internal administrative offset is a type of non-centralized administrative offset.

Offset means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

OGC means the USDA Office of the General Counsel.

Payee means a person who is due a payment from a payment authorizing agency, and includes a person who is entitled to all or part of a payment.

Payment authorizing agency means a Federal agency or USDA agency that is authorized to disburse payments to a recipient.

Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of public or private entity other than a Federal agency.

Recoupment means a special method for adjusting debts arising under the same transaction or occurrence, such as obligations arising under the same contract.

Reviewing officer means a person designated by a creditor agency as responsible for conducting a hearing or providing documentary review on the existence of the debt and the propriety of an administrative collection action.

Secretary means the Secretary of Agriculture, unless otherwise specified.

Treasury means the United States Department of the Treasury.

USDA means the United States Department of Agriculture.

§ 3.4 Delegations of authority.

The head of an agency is authorized to exercise any or all of the functions provided by this part with respect to programs for which the head of the agency has delegated responsibility, and may delegate and authorize the redelegation of any of the functions vested in the head of the agency by this part, except as otherwise provided by this part.

Subpart B—Standards for the Administrative Collection and Compromise of Claims

§ 3.10 Aggressive agency collection activity.

An agency shall aggressively collect all debts arising out of activities of, or referred or transferred for collection services to, that agency. Collection activities shall be undertaken promptly with follow-up action taken as necessary.

§ 3.11 Demand for payment.

(a) *Demand Letters.* Generally, debt collection is initiated with a written demand for payment to the debtor unless an applicable agreement or instrument (including a post-delinquency payment agreement) provides otherwise (such as providing USDA an immediate right to collect upon delinquency). Written demand as described in paragraph (b) of this section shall be made promptly upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate with the agency to resolve the debt. The specific content, timing, and number of demand letters shall depend upon the type and amount of the debt and the debtor's response, if any, to the agency's letters or telephone calls. Where statutes or agency regulations are specific as to the requirements for demand letters, an agency shall follow its own procedures in formulating demand letters. Generally, one demand letter should suffice. In determining the timing of the demand letter(s), an agency shall give due regard to the need to refer debts promptly to Justice for litigation, in accordance with 31 CFR 904.1 or otherwise. When necessary to protect the government's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under this part, including immediate referral for litigation.

(b) *Required notices.* In demand letters, the USDA creditor agency shall inform the debtor:

(1) The nature and amount of the debt; and the facts giving rise to the debt;

(2) How interest, penalties, and administrative costs are added to the debt, the date by which payment must be made to avoid such charges, and that such assessments must be made unless excused in accordance with § 3.17;

(3) The date by which payment should be made to avoid the enforced collection actions described in paragraph (b)(6) of this section;

(4) The willingness of the creditor agency to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the debt under terms acceptable to the agency (*see* § 3.16);

(5) The name, address, telephone number and email address (optional) of a contact person or office within the creditor agency;

(6) The intention of the creditor agency to enforce collection if the debtor fails to pay or otherwise resolve the debt, by taking one or more of the following actions:

(i) *Offset.* Offset the debtor's USDA payments and refer the debtor's debt to TOP for offset against other Federal payments, including income tax refunds, in accordance with subpart D;

(ii) *Private collection agency.* [Reserved].

(iii) *Credit reporting agency reporting.* Report the debt to a credit reporting agency in accordance with § 3.12;

(iv) *Administrative wage garnishment.* Refer the debt to Treasury in accordance with subpart E for possible collection by garnishing the debtor's wages through administrative wage garnishment;

(v) *Litigation.* Refer the debt to Justice in accordance with § 3.21 to initiate litigation to collect the debt;

(vi) *Referral to Treasury.* Referral of the debt to Treasury for collection in accordance with subpart C of this part;

(7) That USDA debts over 180 days delinquent must be referred to Treasury for the collection actions described in paragraph (b)(6) of this section;

(8) How the debtor may inspect and copy records related to the debt;

(9) How the debtor may request a review of the USDA creditor agency's determination that the debtor owes a debt and present evidence that the debt is not delinquent or legally enforceable (*see* subpart F of this part);

(10) [Reserved].

(11) How a debtor who is a Federal employee subject to Federal salary offset

may request a hearing (*see* subpart G of this part);

(12) How a debtor may request a waiver of the debt, if applicable;

(13) How the debtor's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service (*see http://www.irs.gov*);

(14) How the debtor may exercise other statutory or regulatory rights and remedies available to the debtor;

(15) That certain debtors may be ineligible for government loans, guarantees, and insurance (*see* § 3.14);

(16) If applicable, the creditor agency's intention to suspend or revoke licenses, permits, or privileges (*see* § 3.14); and

(17) That the debtor must advise the creditor agency of the filing of any bankruptcy proceedings of the debtor or of another person liable for the debt being collected.

(c) *Exceptions to notice requirements.* A USDA creditor agency may omit from a demand letter one or more of the provisions contained in paragraphs (b)(6) through (b)(17) if the USDA creditor agency, in consultation with OGC, determines that any provision is not legally required given the collection remedies to be applied to a particular debt.

(d) Agencies shall exercise care to ensure that demand letters are mailed or hand-delivered on the same day that they are dated. There is no prescribed format for demand letters. Agencies shall utilize demand letters and procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation.

(e) Agencies shall respond promptly to communications from debtors, within 30 days of receipt whenever feasible, and shall advise debtors who dispute debts to furnish available evidence to support their contentions.

(f) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if an agency determines to pursue, or is required to pursue, internal administrative offset, the procedures applicable to offset must be followed (*see* subpart D). The availability of funds or money for debt satisfaction by internal administrative offset, and the agency's determination to pursue collection by internal administrative offset, shall release the agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section.

(g) Prior to referring a debt for litigation under 31 CFR part 904, agencies shall advise each debtor determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification shall comply with Executive Order 12988 (3 CFR, 1996 Comp., pp. 157–163) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document. Litigation counsel for the government shall be advised that this notice has been given.

(h) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the agency shall immediately seek legal advice from OGC concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the agency is advised that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor must stop immediately. The agency should take the following steps:

(1) After seeking legal advice, a proof of claim must be filed in most cases with the bankruptcy court or the Trustee. Agencies shall refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If the agency is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is stayed in most cases by the automatic stay. However, agencies may seek legal advice from OGC to determine whether their payments to the debtor and payments of other agencies available for offset may be frozen by the agency until relief from the automatic stay can be obtained from the bankruptcy court. Agencies also may seek legal advice from OGC to determine whether recoupment is available.

§ 3.12 Reporting of consumer debts.

(a) *Notice.* In demand letters to debtors sent in accordance with § 3.11, agencies shall inform debtors:

(1) The intent of the agency to report the delinquent consumer debt to credit reporting agencies after 60 days;

(2) The specific information to be transmitted (*i.e.,* name, address, and taxpayer identification number, information about the debt);

(3) The actions which may be taken by the debtor to prevent the reporting (*i.e.,* repayment in full or a repayment agreement); and

(4) The rights of the debtor to seek review of the existence of the debt in accordance with subpart F.

(b) *Disclosure.* Disclosure of delinquent consumer debts must be consistent with the requirements of 31 U.S.C. 3711(e), the Privacy Act of 1974 (5 U.S.C. 552a), the Bankruptcy Code, and 31 CFR 901.4.

(c) *Non-duplication of hearings.* When an agency has given a debtor any of the notices required by this part and an opportunity for administrative review under subpart F, the agency need not duplicate such notice and review opportunities before reporting the delinquent debt to credit bureaus.

(d) *Stay of disclosure.* Agencies shall not disclose a delinquent debt to a credit reporting agency if a debtor requests review under subpart F until a final determination is made by a reviewing official that upholds the agency intent to disclose.

(e) *Commercial debt.* The requirement of this section does not apply to commercial debts, although agencies should report commercial debts to commercial credit bureaus.

§ 3.13 Contracting with private collection contractors and with entities that locate and recover unclaimed assets. [Reserved.]

§ 3.14 Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges.

(a) Agencies are not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency, except as otherwise authorized by law or upon waiver of application of this section by the USDA Chief Financial Officer (CFO) or Deputy CFO. This prohibition does not apply to disaster loans. Agencies may extend credit after the delinquency has been resolved. The Secretary of the Treasury may exempt classes of debts from this prohibition and has prescribed standards defining when a ''delinquency'' is ''resolved'' for purposes of this prohibition. *See* 31 CFR 285.13 (Barring Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees).

(b) Similarly, agencies also are not permitted to extend financial assistance (either directly or indirectly) in the form of grants, loans, or loan guarantees to judgment debtors who have a judgment lien placed against their property until the judgment is satisfied, unless the agency grants a waiver in accordance with agency regulations. *See* 31 U.S.C. 3201(e).

(c) In non-bankruptcy cases, agencies seeking the collection of statutory penalties, forfeitures, or other types of

claims must consider the suspension or revocation of licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay such a debt in accordance with the agency's regulations or governing procedures. The debtor shall be advised in the agency's written demand for payment of the agency's ability to suspend or revoke licenses, permits, or privileges.

(d) Any agency making, guaranteeing, insuring, acquiring, or participating in, loans must consider suspending or disqualifying any lender, contractor, or broker from doing further business with the agency or engaging in programs sponsored by the agency if such lender, contractor, or broker fails to pay its debts to the government within a reasonable time or if such lender, contractor, or broker has been suspended, debarred, or disqualified from participation in a program or activity by another Federal agency. Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overrun payments, but not including sums owed to the government under the Internal Revenue Code) owed to any Federal agency or instrumentality is grounds for nonprocurement suspension or debarment if the debt is uncontested and the debtor's legal administrative remedies for review of the debt are exhausted. *See* 7 CFR 3017.305(c)(3) and 405(a)(2).

(e) The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 shall be reported to Treasury. Treasury will forward to all interested agencies notification that a surety's certificate of authority to do business with the government has been revoked.

(f) The suspension or revocation of licenses, permits, or privileges also may extend to USDA programs or activities that are administered by the States on behalf of the government, to the extent that they affect the government's ability to collect money or funds owed by debtors. Therefore, States that manage USDA activities, pursuant to approval from the agencies, shall ensure that appropriate steps are taken to safeguard against issuing licenses, permits, or privileges to debtors who fail to pay their debts to the government.

(e) In bankruptcy cases, before advising the debtor of an agency's intention to suspend or revoke licenses, permits, or privileges, agencies may seek legal advice from OGC concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

§ 3.15 Liquidation of collateral.

(a) In accordance with applicable statutes and regulations, agencies may liquidate security or collateral through a sale or a nonjudicial foreclosure, and apply the proceeds to the applicable debt(s), if the debtor fails to pay the debt(s) within a reasonable time after demand and if such action is in the best interest of the United States. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(b) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, the agency may seek legal advice from OGC concerning the impact of the Bankruptcy Code, including, but not limited to, 11 U.S.C. 362, to determine the applicability of the automatic stay and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

§ 3.16 Collection in installments.

(a) Whenever feasible, agencies shall collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, agencies may accept payment in regular installments. Agencies shall obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible (*see* 31 CFR 902.2(g) for methods of verification). Agencies that agree to accept payments in regular installments shall obtain a legally enforceable written agreement from the debtor that specifies all terms of the arrangement and that contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments shall bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments shall be sufficient in size and frequency to liquidate the debt in three years or less.

(c) Security for deferred payments shall be obtained in appropriate cases. Agencies may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at the agency's option.

§ 3.17 Interest, penalties, and administrative costs.

(a) Except as provided in paragraphs (g) and (i) of this section, agencies shall charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. If not included in the agency's demand notice, an agency shall mail or hand-deliver a written notice to the debtor, at the debtor's most recent address available to the agency, explaining the agency's requirements concerning these charges except where these requirements are included in a contractual or repayment agreement. These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.

(b) Agencies shall charge interest on debts owed the United States as follows, except as otherwise required by law:

(1) Interest shall accrue from the date of delinquency, or as otherwise provided by law.

(2) Unless otherwise established in a contract, repayment agreement, or by statute, the rate of interest charged shall be the rate established annually by the Secretary of the Treasury in accordance with 31 U.S.C. 3717. Pursuant to 31 U.S.C. 3717, an agency may charge a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the rights of the United States. The agency must document the reason(s) for its determination that the higher rate is necessary.

(3) The rate of interest, as initially charged, shall remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the agency may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest shall not be compounded, that is, interest shall not be charged on interest, penalties, or administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement shall be added to the principal under the new repayment agreement.

(c) Agencies shall assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs shall be based on actual costs incurred or upon estimated costs as determined by the assessing agency.

(d) Unless otherwise established in a contract, repayment agreement, or by statute, agencies shall charge a penalty, pursuant to 31 U.S.C. 3717(e)(2), not to exceed six percent a year on the amount due on a debt that is delinquent for more than 90 days. This charge shall accrue from the date of delinquency.

(e) Agencies may increase an ''administrative debt'' by the cost of living adjustment in lieu of charging interest and penalties under this section. ''Administrative debt'' includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of government credit, such as those arising from loans and loan guarantees. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. Increases to administrative debts shall be computed annually. Agencies may use this alternative only when there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalties, second to administrative charges, third to interest, and last to principal, except as otherwise required by law.

(g) Agencies shall waive the collection of interest and administrative charges imposed pursuant to this section (*i.e.*, this does not apply to interest or administrative penalties determined by an applicable agreement or instrument such as a loan contract) on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. Agencies may extend this 30-day period on a case-by-case basis. In addition, agencies may waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt, either under the criteria set forth in the Federal standards for the compromise of debts (31 CFR part 902), or if the agency determines that collection of these charges is against equity and good conscience or is not in the best interest of the United States.

(h) [Reserved]

(i) Agencies are authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with the common law. Agencies shall consult OGC before imposing interest and related charges under common law for any debt.

§ 3.18 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this part or parts 902–904 of title 31 or other authority, agencies may send a request to Treasury to obtain a debtor's mailing address from the records of the Internal Revenue Service (IRS).

(b) Agencies are authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

§ 3.19 Standards for the compromise of claims.

An agency shall follow the standards set forth in 31 CFR part 902 for the compromise of debts pursuant to 31 U.S.C. 3711 arising out of the activities of, or referred or transferred for collection services to, that agency, except where otherwise authorized or required by law.

§ 3.20 Standards for suspending or terminating collection activities.

An agency shall follow the standards set forth in 31 CFR part 903 for the suspension or termination of collection activity pursuant to 31 U.S.C. 3711, except where otherwise authorized or required by law.

§ 3.21 Referrals of Debts to Justice.

An agency shall promptly refer to Justice for litigation debts on which aggressive collection activity has been taken in accordance with this part, and that cannot be compromised by the agency or on which collection activity cannot be suspended or terminated in accordance with 31 CFR parts 902 and 903. Agencies shall follow the procedures set forth in 31 CFR part 904 in making such referrals.

Subpart C—Referral of Debts to Treasury

§ 3.30 General requirements.

(a) Agencies are required by law to transfer delinquent, nontax, legally enforceable debts to Treasury for collection through cross-servicing and through centralized administrative offset. Additionally, USDA has chosen to transfer debts to Treasury for collection through administrative wage garnishment. Agencies need not make duplicate referrals to Treasury for all these purposes; a debt may be referred simultaneously for purposes of collection by cross-servicing, centralized administrative offset, and administrative wage garnishment where applicable. However, in some instances a debt exempt from collection via cross-servicing may be subject to collection by centralized administrative offset so simultaneous referrals are not always the norm. This subpart sets forth rules applicable to the transfer of debts to Treasury for collection by cross-servicing. Rules for transfer to Treasury for centralized administrative offset are set forth in subpart D, and for administrative wage garnishment in subpart E.

(b) When debts are referred or transferred to Treasury, or Treasury-designated debt collection centers under the authority of 31 U.S.C. 3711(g), Treasury shall service, collect, or compromise the debts, or Treasury will suspend or terminate the collection action, in accordance with the statutory requirements and authorities applicable to the collection of such debts.

§ 3.31 Mandatory referral for cross-servicing.

(a) Agencies shall transfer to Treasury any legally enforceable nontax debt in excess of $25, or combination of debts less than $25 that exceeds $25 (in the case of a debtor whose taxpayer identification number (TIN) is unknown the applicable threshold is $100), that has or have been delinquent for a period of 180 days in accordance with 31 CFR 285.12 so that Treasury may take appropriate action on behalf of the creditor agency to collect or compromise, or to suspend or terminate collection, of the debt, including use of debt collection centers and private collection contractors to collect the debt or terminate collection action.

(b) The requirement of paragraph (a) of this section does not apply to any debt that:

(1) Is in litigation or foreclosure (*see* 31 CFR 385.12 (d)(2) for definition);

(2) Will be disposed of under an approved asset sale program (*see* 31 CFR 285.12(d)(3)(i) for definition);

(3) Has been referred to a private collection contractor for a period of time acceptable to Treasury;

(4) Is at a debt collection center for a period of time acceptable to Treasury;

(5) Will be collected under internal offset procedures within three years after the debt first became delinquent;

(6) Is exempt from this requirement based on a determination by the Secretary of the Treasury that exemption for a certain class of debt is in the best interest of the United States. Federal agencies may request that the Secretary of the Treasury exempt specific classes of debts. Any such request by an agency must be sent to the Fiscal Assistant Secretary of the Treasury by the USDA CFO.

(c) A debt is considered 180 days delinquent for purposes of this section if it is 180 days past due and is legally enforceable. A debt is past due if it has not been paid by the date specified in the agency's initial written demand for

payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. A debt is legally enforceable if there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action. Where, for example, a debt is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited, the debt is not considered legally enforceable for purposes of mandatory transfer to Treasury and is not to be transferred even if the debt is more than 180 days past due. When a final agency determination is made after an administrative appeal or review process (including administrative review under subpart F), the creditor agency must transfer such debt to Treasury, if more than 180 days delinquent, within 30 days after the date of the final decision.

§ 3.32 Discretionary referral for cross-servicing.

Agencies shall consider referring legally enforceable nontax debts that are less than 180 days delinquent to Treasury or to Treasury-designated ''debt collection centers'' in accordance with 31 CFR 285.12 to accomplish efficient, cost effective debt collection if no USDA payments will be available to collect the debt through internal administrative offset under § 3.43.

§ 3.33 Required certification.

Agencies referring delinquent debts to Treasury for collection via cross-servicing must certify, in writing, that:

(a) The debts being transferred are valid and legally enforceable;

(b) There are no legal bars to collection; and

(c) The agency has complied with all prerequisites to a particular collection action under the laws, regulations or policies applicable to the agency, unless the agency and Treasury agree that Treasury will do so on behalf of the agency.

§ 3.34 Fees.

Federal agencies operating Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred debts. The fee may be paid out of amounts collected and may be added to the debt as an administrative cost.

Subpart D—Administrative Offset

§ 3.40 Scope.

(a) This subpart sets forth the procedures to be used by agencies in collecting debts by administrative offset. The term ''administrative offset'' has the meaning provided in 31 U.S.C. 3701(a)(1).

(b) This section does not apply to:

(1) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;

(2) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (*see* 31 CFR 285.4, Federal Benefit Offset);

(3) Debts arising under, or payments made under, the Internal Revenue Code (except for offset of tax refunds) or the tariff laws of the United States;

(4) Offsets against Federal salaries (such offsets are covered by subpart F);

(5) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(6) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments of particular types of debts;

(7) Offsets in the course of judicial proceedings, including bankruptcy; or

(8) Intracontractual offsets to satisfy contract debts taken by a contracting officer under the Contract Disputes Act, 41 U.S.C. 601–613.

(c) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(d) Supplemental provisions related to offsets by the Commodity Credit Corporation (CCC) may be found at 7 CFR part 1403 and for the Farm Service Agency at 7 CFR part 792.

(e) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be conducted more than 10 years after the government's right to collect the debt first accrued, unless facts material to the government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the government who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(f) In bankruptcy cases, agencies may seek legal advice from OGC concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

§ 3.41 Procedures for notification of intent to collect by administrative offset.

(a) Prior to initiation of collection by administrative offset, a creditor agency must:

(1) Send the debtor a written Notice of Intent to Collect by Administrative Offset, by mail or hand-delivery, of the type and amount of the debt, the intention of the agency to use non-centralized administrative offset (which includes a USDA internal administrative offset) to collect the debt 30 days after the date of the Notice, the name of the Federal agency or USDA agency from which the creditor agency wishes to collect in the case of a non-centralized administrative offset, the intent to refer the debt to Treasury for collection through centralized administrative offset (including possible offset of tax refunds) 60 days after the date of the Notice if the debt is not satisfied by offset within USDA or by agreement with another Federal agency, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(2) Give the debtor the opportunity:

(i) To inspect and copy agency records related to the debt;

(ii) For a review within the agency of the determination of indebtedness in accordance with subpart F; and

(iii) To make a written agreement to repay the debt.

(b) The procedures set forth in paragraph (a) of this section are not required when:

(1) The offset is in the nature of a recoupment;

(2) The debt arises under a contract subject to the Contracts Disputes Act;

(3) In the case of a non-centralized administrative offset, the agency first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, the agency shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the government; or

(4) The agency previously has given a debtor any of the notice and review opportunities required under this part, with respect to a particular debt (*see, e.g.*, § 3.11). With respect to loans paid on an installment basis, notice and opportunity to review under this part may only be provided once for the life of the loan upon the occurrence of the first delinquent installment. Subsequently, if an agency elects this option, credit reporting agencies may be furnished periodically with updates as

to the current or delinquent status of the loan account and the borrower may receive notice of referral to TOP for delinquent installments without further opportunity for review. Any interest accrued or any installments coming due after the offset is initiated also would not require a new notice and opportunity to review.

(c) The Notice of Intent to Collect by Administrative Offset shall be included as part of a demand letter issued under § 3.11 to advise the debtor of all debt collection possibilities that the agency will seek to employ.

§ 3.42 Debtor rights to inspect or copy records, submit repayment proposals, or request administrative review.

(a) A debtor who intends to inspect or copy agency or USDA records with respect to the debt must notify the creditor agency in writing within 30 days of the date of the Notice of Intent to Collect by Administrative Offset. In response, the agency must notify the debtor of the location, time, and any other conditions, consistent with part 1, subpart A, of this title, for inspecting and copying, and that the debtor may be liable for reasonable copying expenses. A decision by the agency under this paragraph shall not be subject to review under subpart F or by NAD under 7 CFR part 11.

(b) The debtor may, in response to the Notice of Intent to Collect by Administrative Offset, propose to the creditor agency a written agreement to repay the debt as an alternative to administrative offset. Any debtor who wishes to do this must submit a written proposal for repayment of the debt, which must be received by the creditor agency within 30 days of the date of the Notice of Intent to Collect by Administrative Offset or 15 days after the date of a decision adverse to the debtor under subpart F. In response, the creditor agency must notify the debtor in writing whether the proposed agreement is acceptable. In exercising its discretion, the creditor agency must balance the government's interest in collecting the debt against fairness to the debtor. A decision by the agency under this paragraph shall not be subject to review under subpart F or by NAD under 7 CFR part 11.

(c) A debtor must request an administrative review of the debt under subpart F within 30 days of the date of the Notice of Intent to Collect by Administrative Offset for purposes of a proposed collection by non-centralized administrative offset and within 60 days of the date of the Notice of Intent to Collect by Administrative Offset for purposes of a proposed collection by referral to Treasury for offset against other Federal payments that would include tax refunds.

§ 3.43 Non-centralized administrative offset.

(a) *Scope.* In cooperation with the Federal agency certifying or authorizing payments to the debtor, a creditor agency may make a request directly to a payment authorizing agency to offset a payment due a debtor to collect a delinquent debt from, for example, a Federal employee's lump sum payment upon leaving government service in order to pay an unpaid advance. Also, non-centralized administrative offsets include USDA internal administrative offsets, for example, of CCC payments to pay Farm Service Agency (FSA) delinquent debts. Unless prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable nontax delinquent debts may be collected through non-centralized administrative offset.

(b) *Effectuation of offset.* A non-centralized administrative offset may be effected 31 days after the date of the Notice of Intent to Collect by Administrative Offset, any time after the final determination in an administrative review conducted under subpart F upholds the creditor agency's decision to offset, or any time after the creditor agency notifies the debtor that its repayment proposal submitted under § 3.42(c) is not acceptable if the 30-day period for the debtor to seek review of the Notice has expired, unless the creditor agency makes a determination under § 3.41(b)(3) that immediate action to effectuate the offset is necessary.

(c) *Certification.* A payment authorizing agency may conduct a non-centralized administrative offset only after certification by a creditor agency that:

(1) The debtor has been provided notice and opportunity for review as set forth in § 3.41; and

(2) The payment authorizing agency has received written certification from the creditor agency that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the creditor agency has fully complied with its regulations concerning administrative offset.

(d) *Responsibilities of payment authorizing agencies.* Payment authorizing agencies shall comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the program of the payment authorizing agency, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

(e) *Application of recovered amounts to satisfaction of debts.* When collecting multiple debts by non-centralized administrative offset, agencies shall apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

§ 3.44 Centralized administrative offset.

(a) *Mandatory referral.* After the notice and review opportunity requirements of § 3.41 are met, an agency shall refer debts which are over 180 days delinquent to Treasury for collection through centralized administrative offset 61 days after the date of the Notice of Intent to Collect by Administrative Offset provided in accordance with § 3.41. If the debtor seeks review under subpart F, referral of the debt must occur within 30 days of the final decision upholding the agency decision to offset the debt if the debt is more than 180 days delinquent.

(b) *Discretionary referral.* After the notice and review opportunity requirements of § 3.41 are met, and administrative review under subpart F is not sought or is unsuccessful on the part of the debtor, an agency may refer a debt that is less than 180 days delinquent.

(c) *Procedures for referral.* Agencies shall refer debts to Treasury for collection in accordance with Treasury procedures set forth in 31 CFR part 285.5.

(d) *Payment authorizing agency responsibilities.* (1) The names and TINs of debtors who owe debts referred to Treasury under this section shall be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of Treasury, the Department of Defense, the United States Postal Service, other government corporations, and disbursing officials of the United States designated by Treasury. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment authorizing agency must offset a payment to satisfy the debt.

(2) Any USDA official serving as a Federal disbursing official for purposes of effecting centralized administrative offset under this section must notify a debtor/payee in writing that an offset has occurred to satisfy, in part or in full,

a past due, legally enforceable delinquent debt. The notice must include the information set forth in paragraph (d)(4) of this section.

(3) As described in 31 CFR 285.5(g)(1) and (2), any USDA official serving as a Federal disbursing official for purposes of centralized administrative offset under this section shall furnish a warning notice to a payee/debtor prior to beginning offset of recurring payments. Such warning notice shall include the information set forth in paragraph (d)(4) of this section.

(4) The notice shall include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of the creditor agency requesting the offset, and a contact point within the creditor agency who will respond to questions regarding the offset.

(5) The priorities for collecting multiple payments owed by a payee/debtor shall be those set forth in 31 CFR 285.5(f)(3).

§ 3.45 USDA payment authorizing agency offset of pro rata share of payments due entity in which debtor participates.

(a) A USDA payment authorizing agency, to satisfy either a non-centralized or centralized administrative offset under §§ 3.43 and 3.44, may offset:

(1) A debtor's pro rata share of USDA payments due any entity in which the debtor participates, either directly or indirectly, as determined by the creditor agency or the payment authorizing agency; or

(2) USDA payments due any entity that the debtor has established, or reorganized, transferred ownership of, or changed in some other manner the operation of, for the purpose of avoiding payment on the claim or debt, as determined by the creditor agency or the payment authorizing agency.

(b) Prior to exercising the authority of this section to offset any portion of a payment due an entity, the creditor agency must have provided notice to that entity in accordance with § 3.41 of its intent to offset payments to the entity in satisfaction of the debt of an individual debtor participating in that entity.

§ 3.46 Offset against tax refunds.

USDA will take action to effect administrative offset against tax refunds due to debtors under 26 U.S.C. 6402 in accordance with the provisions of 31 U.S.C. 3720A through referral for centralized administrative offset under § 3.44.

§ 3.47 Offset against amounts payable from Civil Service Retirement and Disability Fund.

Upon providing the Office of Personnel Management (OPM) written certification that a debtor has been afforded the procedures provided in § 3.41, creditor agencies may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801 through 831.1808. Upon receipt of such a request, OPM will identify and ''flag'' a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in § 3.40(e).

Subpart E—Administrative Wage Garnishment

§ 3.50 Purpose.

This subpart provides USDA procedures for use of administrative wage garnishment to garnish a debtor's disposable pay to satisfy delinquent nontax debt owed to USDA creditor agencies.

§ 3.51 Scope.

(a) This subpart applies to any agency that administers a program that gives rise to a delinquent nontax debt owed to the United States and to any agency that pursues recovery of such debt.

(b) This subpart shall apply notwithstanding any provision of State law.

(c) Nothing in this subpart precludes the compromise of a debt or the suspension or termination of collection action in accordance with the provisions of this part or other applicable law.

(d) The receipt of payments pursuant to this subpart does not preclude an agency from pursuing other debt collection remedies under this part. An agency may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(e) This subpart does not apply to the collection of delinquent nontax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the salary offset procedures of subpart G of this part.

(f) Nothing in this subpart requires agencies to duplicate notices or administrative proceedings required by contract or other laws or regulations, or other provisions of this part.

§ 3.52 Definitions.

As used in this subpart the following definitions shall apply:

Disposable pay means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this section, ''amounts required by law to be withheld'' include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

Employer means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local governments, but does not include an agency of the Federal government.

Garnishment means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms ''wage garnishment order'' and ''garnishment order'' have the same meaning as ''withholding order.''

§ 3.53 Procedures.

(a) USDA has determined to pursue administrative wage garnishment of USDA debtors by referral of nontax legally enforceable debts to Treasury for issuance of garnishment orders by Treasury or its contractors.

(b) Pursuant to § 3.11, agencies must notify debtors of their intent to pursue garnishment of their disposable pay through referral of the debt to Treasury for issuance of an administrative wage garnishment order and provide debtors with the opportunity for review of the existence of the debt under subpart F within 60 days of the date of the demand letter.

(c) Upon expiration of the 60-day period for review, or upon completion of a review under subpart F that upholds the agency's determination of the debt, USDA will transfer the debt for collection through administrative wage garnishment as well as other means through cross-servicing or centralized administrative offset.

(d) If Treasury elects to pursue collection through administrative wage garnishment, Treasury, or its contractor, will notify the debtor of its intent to initiate garnishment proceedings and provide the debtor with the opportunity

to inspect and copy agency records related to the debt, enter into a repayment agreement, or request a hearing as to the existence or amount of the debt or the terms of the proposed repayment schedule under the proposed garnishment order, in accordance with 31 CFR 285.11.

(e) If the debtor requests a hearing at any time, Treasury will forward the request to the USDA creditor agency to which the debt is owed, and the creditor agency will contact the Office of the CFO (OCFO) for selection of a hearing official. The issuance of proposed garnishment orders by Treasury shall not be subject to appeal to NAD under 7 CFR part 11. Hearings will be conducted in accordance with 31 CFR 285.11(f).

(f) OCFO shall provide a copy of the hearing official's final decision to Treasury for implementation with respect to the subject garnishment order.

Subpart F—Administrative Reviews for Administrative Offset, Administrative Wage Garnishment, and Disclosure to Credit Reporting Agencies

§ 3.60 Applicability.

(a) This section establishes consolidated administrative review procedures for debts subject to administrative offset, administrative wage garnishment, and disclosure to credit reporting agencies, under subparts D and E. A hearing or review under this section shall satisfy the required opportunity for administrative review by the agency of the determination of a debt for both administrative offset and administrative wage garnishment that is required before transfer to Treasury for collection or collection by the agency through non-centralized administrative offset.

(b) For debt collection proceedings initiated by FSA, CCC, the Rural Housing Service, the Rural Business-Cooperative Service, the Risk Management Agency, the Federal Crop Insurance Corporation, the Natural Resources Conservation Service, Rural Development, and the Rural Utilities Service (but not for programs authorized by the Rural Electrification Act of 1936 or the Rural Telephone Bank Act, 7 U.S.C. 901 *et seq.*), unless otherwise specified, any administrative review will be conducted by NAD in accordance with 7 CFR part 11 and not the procedures of this subpart.

§ 3.61 Presiding employee.

An agency reviewing officer may be an agency employee, or the agency may provide for reviews to be done by another agency through an interagency agreement. No agency employee may act as a reviewing officer for the consideration of collection by administrative offset in a matter for which the employee was a contracting officer or a debt management officer.

§ 3.62 Procedures.

(a) A debtor who receives a Notice of Intent to Collect by Administrative Offset, Notice of Disclosure to Credit Reporting Agencies, or Notice of Intent to Collect by Administrative Wage Garnishment, or more than one of the above simultaneously, may request administrative review of the agency's determination that the debt exists and the amount of the debt. Any debtor who wishes to do this must submit a written explanation of why the debtor disagrees and seeks review. The request must be received by the creditor agency within 60 days of the date of the notice in the case of a Notice of Intent to Collect by Administrative Offset that includes referral to Treasury for offset against other Federal payments including tax refunds and 30 days in the case of all other notices.

(b) In response, the creditor agency must notify the debtor in writing whether the review will be by documentary review or by hearing. An oral hearing is not necessary with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. The agency shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. If the debtor requests a hearing, and the creditor agency decides to conduct a documentary review, the agency must notify the debtor of the reason why a hearing will not be granted. The agency must also advise the debtor of the procedures to be used in reviewing the documentary record, or of the date, location and procedures to be used if review is by a hearing.

(c) An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(d) After the debtor requests a hearing, the hearing official shall notify the debtor of:

(1) The date and time of a telephonic hearing;

(2) The date, time, and location of an in-person oral hearing; or

(3) The deadline for the submission of evidence for a documentary review.

(e) Unless otherwise arranged by mutual agreement between the debtor and the agency, evidenced in writing, any documentary review or hearing will be conducted not less than 10 days and no more than 45 days after receipt of the request for review.

(f) Unless otherwise arranged by mutual agreement between the debtor and the agency, evidenced in writing, a documentary review or hearing will be based on agency records plus other relevant documentary evidence which may be submitted by the debtor within 10 days after the request for review is received.

(g)(1) *Hearings.* Hearings will be as informal as possible, and will be conducted by a reviewing officer in a fair and expeditious manner. The reviewing officer need not use the formal rules of evidence with regard to the admissibility of evidence or the use of evidence once admitted. However, clearly irrelevant material should not be admitted, whether or not any party objects. Any party to the hearing may offer exhibits, such as copies of financial records, telephone memoranda, or agreements, provided the opposing party is notified at least five days before the hearing.

(2) *Burden of proof.* (i) The agency will have the burden of going forward to prove the existence or amount of the debt.

(ii) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that repayment would cause a financial hardship to the debtor or that collection of the debt may not be pursued due to operation of law

(3) Witnesses must testify under oath or affirmation.

(4) Debtors may represent themselves or may be represented at their own expense by an attorney or other person.

(5) The substance of all significant matters discussed at the hearing must be recorded. No official record or transcript of the hearing need be created, but if a debtor requested that a transcript be made, it will be at the debtor's expense.

(h) In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to

paragraph (f)(4) of this section will be deemed as not having timely filed a request for a hearing.

(i)(1) Within no more than 30 days after the hearing or receipt of documentation for the documentary review, the reviewing officer will issue a written decision to the debtor and the agency, including the supporting rationale for the decision. The deadline for issuance of the decision may be extended by the reviewing officer for good cause for no more than 30 days.

(2) The written decision shall include:

(i) A summary of the facts presented;

(ii) The hearing official's findings, analysis and conclusions; and

(iii) Resolution of any significant procedural matter which was in dispute before or during the hearing or documentary review.

(3) The reviewing officer's decision constitutes final agency action for purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*) as to the following issues:

(i) All issues of fact relating to the basis of the debt (including the existence of the debt and the propriety of administrative offset), in cases where the debtor previously had not been afforded due process; and

(ii) The existence of the debt and the propriety of administrative offset, in cases where the debtor previously had been afforded due process as to issues of fact relating to the basis of the debt.

(j) The reviewing officer will promptly distribute copies of the decision to the USDA CFO, the agency CFO (if any), the agency debt management officer, the debtor, and the debtor's representative, if any.

Subpart G—Federal Salary Offset

Authority : 5 U.S.C. 5514; 5 CFR part 550, subpart K.

§ 3.70 Scope.

(a) The provisions of this subpart set forth USDA procedures for the collection of a Federal employee's pay by salary offset to satisfy certain valid and past due debts owed the government.

(b) These regulations apply to:

(1) Current USDA employees and employees of other agencies who owe debts to USDA; and

(2) Current USDA employees who owe debts to other agencies.

(c) These regulations do not apply to debts owed by FSA county executive directors or county office employees. Salaries of those employees are subject to administrative offset as provided in 7 CFR part 792 or part 1403.

(d) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g. travel advances in 5 U.S.C. 5705 or employee training expense in 5 U.S.C. 4108).

(e) These regulations identify the types of salary offset available to USDA, as well as certain rights provided to the employee, which include a written notice before deductions begin and the opportunity to petition for a hearing and to receive a written decision if a hearing is granted. The rights provided by this section do not extend to:

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(f) These regulations do not preclude an employee from:

(1) Requesting waiver of an erroneous overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716;

(2) Requesting waiver of any other type of debt, if waiver is available by statute; or

(3) Questioning the amount or validity of a debt, in the manner prescribed by this part.

(g) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under USDA regulations contained elsewhere.

§ 3.71 Definitions.

As used in this subpart the following definitions shall apply:

Agency means an executive department or agency; a military department; the United States Postal Service; the Postal Rate Commission; the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the government; or a government corporation.

Debt means:

(1) An amount owed to the United States from sources which include, but are not limited to, insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice).

(2) An amount owed to the United States by an employee for pecuniary losses where the employee has been determined to be liable due to his or her negligent, willful, unauthorized or illegal acts, including but not limited to:

(i) Theft, misuse, or loss of government funds;

(ii) False claims for services and travel;

(iii) Illegal, unauthorized obligations and expenditures of government appropriations;

(iv) Using or authorizing the use of government-owned or leased equipment, facilities, supplies, and services for other than official or approved purposes;

(v) Lost, stolen, damaged, or destroyed government property;

(vi) Erroneous entries on accounting records or reports; and

(vii) Deliberate failure to provide physical security and control procedures for accountable officers, if such failure is determined to be the proximate cause for a loss of government funds.

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with 5 CFR parts 581 and 582). Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in section 581.105(b) through (f) of part 5 of this title.

Employee means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces, but does not include a FSA county executive director or county office employee.

Hearing official means a USDA administrative law judge or some other

individual not under the control of the Secretary.

Salary offset means a reduction of a debt by offset(s) from the disposable pay of an employee without his or her consent.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b) or any other law.

§ 3.72 Coordinating offset with another Federal agency.

(a) *When USDA is owed the debt.* When USDA is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until USDA provides the agency with a written certification that the debtor owes USDA a debt (including the amount and basis of the debt and the due date of the payment) and that USDA has complied with these regulations.

(b) *When another agency is owed the debt.* USDA may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount and basis of the debt and the due date of the payment) and that the agency has complied with its regulations required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

(c) *Mandatory centralized administrative offset.* Debts may be referred to Treasury under § 3.44 for collection through salary offset in accordance with 31 CFR 285.7.

§ 3.73 Determination of indebtedness.

(a) In determining that an employee is indebted to USDA and that 31 CFR parts 900 through 904 have been satisfied and that salary offset is appropriate, USDA will review the debt to make sure that it is valid and past due.

(b) If USDA determines that any of the requirements of paragraph (a) of this section have not been met, no determination of indebtedness shall be made and salary offset will not proceed until USDA is assured that the requirements have been met.

§ 3.74 Notice requirements before offset.

Except as provided in paragraph (b) of this section, salary offset will not be made unless USDA first provides the employee with a minimum of 30 days written notice. This Notice of Intent to Offset Salary will state:

(a) That USDA has reviewed the records relating to the debt and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) USDA's intention to collect the debt by means of deduction from the employee's current disposable pay until the debt and all accumulated interest are paid in full;

(c) The approximate beginning date, frequency, and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and; and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

(d) An explanation of USDA requirements concerning interest, penalties and administrative costs; unless such payments are waived in accordance with 31 U.S.C. 3717 and § 3.17;

(e) The employee's right to inspect and copy USDA records relating to the debt;

(f) The employee's right to enter into a written agreement with USDA for a repayment schedule differing from that proposed by USDA, so long as the terms of the repayment schedule proposed by the employee are agreeable to USDA;

(g) The employee's right to a hearing conducted by a hearing official on USDA's determination of the debt, the amount of the debt, or percentage of disposable pay to be deducted each pay period, so long as a petition is filed by the employee as prescribed by USDA;

(h) That the timely filing of a petition for hearing will stay the collection proceedings;

(i) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests, and the hearing officer grants, a delay in the proceedings;

(j) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority;

(k) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(l) That amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary;

(m) The method and time period for requesting a hearing; and

(n) The name and address of an official of USDA to whom communications must be directed.

§ 3.75 Request for a hearing.

(a) Except as provided in paragraph (c) of this section, an employee must file a petition for a hearing that is received by USDA not later than 30 days from the date of the USDA notice described in § 3.74, if an employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) USDA's proposed offset schedule (including percentage).

(b) The petition must be signed by the employee and must identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the petition must state the objection and the reasons for it.

(c) If the employee files a petition for a hearing later than the 30 days as described in paragraph (a) of this section, the hearing officer may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

§ 3.76 Result if employee fails to meet deadlines.

An employee will not be granted a hearing and will have his or her disposable pay offset in accordance with USDA's offset schedule if the employee:

(a) Fails to file a petition for a hearing as prescribed in § 3.75; or

(b) Is scheduled to appear and fails to appear at the hearing.

§ 3.77 Hearing.

(a) If an employee timely files a petition for a hearing under section 3.75, USDA shall select the time, date, and location for the hearing.

(b)(1) Hearings shall be conducted by the hearing official designated in accordance with 5 CFR 550.1107; and

(2) Rules of evidence shall not be adhered to, but the hearing official shall consider all evidence that he or she determines to be relevant to the debt that is the subject of the hearing and weigh it accordingly, given all of the facts and circumstances surrounding the debt.

(c) USDA will have the burden of going forward to prove the existence of the debt.

(d) The employee requesting the hearing shall bear the ultimate burden of proof.

(e) The evidence presented by the employee must prove that no debt exists or cast sufficient doubt such that reasonable minds could differ as to the existence of the debt.

§ 3.78 Written decision following a hearing.

Written decisions provided after a hearing will include:

(a) A statement of the facts presented at the hearing to support the nature and origin of the alleged debt and those presented to refute the debt;

(b) The hearing officer's analysis, findings, and conclusions, considering all the evidence presented and the respective burdens of the parties, in light of the hearing;

(c) The amount and validity of the alleged debt determined as a result of the hearing;

(d) The payment schedule (including percentage of disposable pay), if applicable;

(e) The determination that the amount of the debt at this hearing is the final agency action on this matter regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. However, even if the hearing official determines that a debt may not be collected by salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still seek collection of the debt by other means authorized by this part; and

(f) Notice that the final determination by the hearing official regarding the existence and amount of a debt is subject to referral to Treasury under § 3.33 in the same manner as any other delinquent debt.

§ 3.79 Review of USDA records related to the debt.

(a) *Notification by employee.* An employee who intends to inspect or copy USDA records related to the debt must send a letter to USDA stating his or her intention. The letter must be received by USDA within 30 days of the date of the Notice of Intent to Offset Salary.

(b) *USDA response.* In response to the timely notice submitted by the debtor as described in paragraph (a) of this section, USDA will notify the employee of the location and time when the employee may inspect and copy USDA records related to the debt.

§ 3.80 Written agreement to repay debts as alternative to salary offset.

(a) *Notification by employee.* The employee may propose, in response to a Notice of Intent to Offset Salary, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt that is received by USDA within 30 days of the date of the Notice of Intent to Offset Salary or 15 days after the date of a hearing decision issued under § 3.78.

(b) *USDA response.* USDA will notify the employee whether the employee's proposed written agreement for repayment is acceptable. USDA may accept a repayment agreement instead of proceeding by offset. In making this determination, USDA will balance the USDA interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, USDA will accept a repayment agreement, instead of offset, for good cause such as, if the employee is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

§ 3.81 Procedures for salary offset: when deductions may begin.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in USDA's Notice of Intent to Offset Salary to collect from the employee's current pay.

(b) If the employee filed a petition for a hearing with USDA before the expiration of the period provided for in § 3.75, then deductions will begin after the hearing officer has provided the employee with a hearing, and a final written decision has been rendered in favor of USDA.

(c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected according to the procedures for administrative offset (see subpart D of this part).

§ 3.82 Procedures for salary offset: types of collection.

A debt will be collected in a lump-sum or in installments. Collection will be by lump-sum collection unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of disposable pay for an ordinary pay period. In these cases, deduction will be by installments, as set forth in § 3.83.

§ 3.83 Procedures for salary offset: methods of collection.

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and USDA agree to alternative arrangements for repayment under § 3.80.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than three years. Installment payments of less than $25 per pay period or $50 a month will be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* USDA will make deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

§ 3.84 Procedures for salary offset: Imposition of interest, penalties, and administrative costs.

Interest, penalties and administrative costs will be charged in accordance with § 3.17.

§ 3.85 Non-waiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee payment (or all or portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

§ 3.86 Refunds.

USDA will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owed to the United States (unless expressly prohibited by statute or regulation); or

(b) USDA is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

§ 3.87 Agency regulations.

USDA agencies may issue regulations or policies not inconsistent with OPM regulations (5 CFR part 550, subpart K) and regulations in this subpart

governing the collection of a debt by salary offset.

Subpart H—Cooperation With the Internal Revenue Service

Authority: 26 U.S.C. 61; 31 U.S.C. 3720A; I TFRM 4055.50.

§ 3.90 Reporting discharged debts to the Internal Revenue Service.

When USDA discharges a debt, whether for the full value or less, it will report the discharge to the Internal Revenue Service (IRS) in accordance with current IRS instructions.

Signed at Washington, DC on December 20, 2007.

Charles F. Conner,

Acting Secretary of Agriculture.

[FR Doc. E7–25388 Filed 12–31–07; 8:45 am]

BILLING CODE 3410–KS–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AI23

List of Approved Spent Fuel Storage Casks: HI-STORM 100 Revision 4, Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of January 8, 2008, for the direct final rule that was published in the **Federal Register** on October 25, 2007 (72 FR 60543). This direct final rule amended the NRC's regulations to revise the HI-STORM 100 cask system listing to include Amendment No. 4 to Certificate of Compliance (CoC) No. 1014.

DATES: *Effective Date:* The effective date of January 8, 2008, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including any comments received, may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.*

SUPPLEMENTARY INFORMATION: On October 25, 2007 (72 FR 60543), the NRC published a direct final rule amending its regulations at 10 CFR 72.214 to revise the HI-STORM 100 cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 4 to CoC No. 1014. This amendment modifies the CoC by adding site-specific options to permit use of a modified HI-STORM 100 cask system at the Indian Point Unit 1 (IP1) Independent Spent Fuel Storage Installation. These options include the shortening of the HI-STORM 100S Version B, Multi-Purpose Canister (MPC)–32 and MPC–32F, and the HI-TRAC 100D Canister to accommodate site-specific restrictions. Additional changes address the Technical Specification (TS) definition of transport operations and associated language in the safety analysis report; the soluble boron requirements for Array/Class 14×14E IP1 fuel; the helium gas backfill requirements for Array/Class 14×14E IP1 fuel; the addition of a fifth damaged fuel container design under the TS definition for damaged fuel container; addition of separate burnup, cooling time, and decay heat limits for Array/Class 14×14 IP1 fuel for loading in an MPC–32 and MPC–32F; addition of antimony-beryllium secondary sources as approved contents; the loading of all IP1 fuel assemblies in damaged fuel containers; the preclusion of loading of IP1 fuel debris in the MPC–32 or MPC–32F; the reduction of the maximum enrichment for Array/Class 14×14E IP1 fuel from 5.0 to 4.5 weight percent uranium-235; changes to licensing drawings to differentiate the IP1 MPC–32 and MPC–32F from the previously approved MPC–32 and MPC–32F; and other editorial changes, including replacing all references to U.S. Tool and Die with Holtec Manufacturing Division. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on January 8, 2008. The NRC did not receive any comments on the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 26th day of December, 2007.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

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

[FR Doc. E7–25439 Filed 12–31–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 558, 563, 564, 567, and 574

[OTS No. 2007–0025]

Technical Amendments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations to incorporate a number of technical and conforming amendments. They include clarifications and corrections of typographical errors.

DATES: *Effective Date:* January 2, 2008.

FOR FURTHER INFORMATION CONTACT: Sandra E. Evans, Legal Information Assistant (Regulations), (202) 906–6076, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS is amending its regulations to incorporate a number of technical and conforming amendments. OTS is making the following miscellaneous changes:

- *Sections 558.1 and 558.2—Procedure upon taking possession; notice of appointment.* OTS's regulations at 12 CFR 558.1 provides that when OTS appoints a conservator or receiver, the conservator or receiver shall, upon taking possession of the institution: (1) Give notice of the appointment to any officer or employee of the institution who appears to be in charge at the institution's principal office, and (2) serve a copy of the order of appointment upon the savings association or an existing conservator or receiver by leaving a copy of the order at the principal office or by handing a copy of the order to specified persons. This final rule modifies §§ 558.1 and 558.2 to increase administrative flexibility by providing that the Director of OTS will designate those persons or entities that will give notice and make service. In addition, reference to service on prior receivers is eliminated because the OTS may appoint only the Federal Deposit Insurance Corporation as a receiver of a savings association.
- *Section 563.43—Loans by savings associations to their executive officers, directors and principal shareholders.* The final rule revises the introductory paragraph to remove the reference to subparts A and B of the Federal Reserve Board's Regulation O (12 CFR Part 215) as Regulation O is no longer divided

into subparts. The introductory paragraph is also revised to remove the reference to § 215.13 since that section no longer exists.

• *Section 564.8—Appraisal policies and practices of savings associations and subsidiaries.* The incorrect reference to § 563.172 in paragraph (a) ''Introduction'' is removed.

• *Section 567.5—Components of capital.* Section 567.5(b)(1)(iv), which refers to net worth certificates, and section 567.5(b)(1)(v), which refers to income capital certificates, are obsolete and are removed. All of these certificates have been redeemed and no longer exist.

• *Section 567.12—Intangible assets, servicing assets, and credit-enhancing interest-only strips.* The practice of grandfathering core deposit intangibles (CDIs) is no longer relevant because all CDIs were fully amortized as of 2002. Therefore, § 567.12(g) is removed.

• *Section 574.2(c)(3)—Definitions.* The cross-reference to § 563b.2(a)(39) is corrected by replacing it with a cross-reference to § 563b.25.

Administrative Procedure Act; Riegle Community Development and Regulatory Improvement Act of 1994

OTS finds that there is good cause to dispense with prior notice and comment on this final rule and with the 30-day delay of effective date mandated by the Administrative Procedure Act.[1] OTS believes that these procedures are unnecessary and contrary to the public interest because the rule merely makes changes to agency procedures and technical changes to existing provisions. Because the amendments in the rule are not substantive, these changes will not affect savings associations.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 provides that regulations that impose additional reporting, disclosure, or other new requirements may not take effect before the first day of the quarter following publication.[2] This section does not apply because this final rule imposes no additional requirements and makes only technical changes to existing regulations.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act,[3] the OTS Director certifies that this technical corrections regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

OTS has determined that this rule is not a ''significant regulatory action'' for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

OTS has determined that the requirements of this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects

12 CFR Part 558

Savings associations.

12 CFR Part 563

Accounting, Administrative practice and procedure, Advertising, Conflict of interests, Crime, Currency, Holding companies, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 564

Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 567

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 574

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

■ Accordingly, the Office of Thrift Supervision amends title 12, chapter V of the Code of Federal Regulations, as set forth below.

PART 558—POSSESSION BY CONSERVATORS AND RECEIVERS FOR FEDERAL AND STATE SAVINGS ASSOCIATIONS

■ 1. The authority citation for part 558 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a 1463, 1464, 1467a.

■ 2. Amend § 558.1 by removing paragraphs (b)(1) and (b)(2) and redesignating paragraphs (b)(3) through (b)(7) as paragraphs (b)(1) through (b)(5).

■ 3. Revise § 558.2 to read as follows:

§ 558.2 Notice of appointment.

(a) When the Director of OTS issues an order for the appointment of a conservator or receiver, the Director will designate the persons or entities whose employees or agents must, before the conservator or receiver takes possession of the savings association:

(1) Give notice of the appointment to any officer or employee who is present in and appears to be in charge at the principal office of the savings association as determined by OTS.

(2) Serve a copy of the order for the appointment upon the savings association or upon the conservator by:

(i) Leaving a certified copy of the order of appointment at the principal office of the savings association as determined by OTS; or

(ii) Handing a certified copy of the order of appointment to the previous conservator of the savings association, or to the officer or employee of the savings association, or to the previous conservator who is present in and appears to be in charge at the principal office of the savings association as determined by OTS.

(3) File with the Secretary of OTS a statement that includes the date and time that notice of the appointment was given and service of the order of appointment was made.

(b) If the Director of OTS appoints a conservator or receiver under this part, OTS will immediately file a notice of the appointment for publication in the **Federal Register**.

PART 563—SAVINGS ASSOCIATIONS—OPERATIONS

■ 4. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 31 U.S.C. 5318; 42 U.S.C. 4106.

§ 563.43 [Amended]

■ 5. Amend the introductory paragraph of § 563.43 by removing ''12 CFR Part 215, subparts A and B of the Federal Reserve Board's Regulation O, with the exception of 12 CFR 215.13,'' and adding ''the Federal Reserve Board's Regulation O (12 CFR Part 215),'' in its place.

PART 564—APPRAISALS

■ 6. The authority citation for Part 564 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828(m), 3331 *et seq.*

§ 564.8 [Amended]

■ 7. Amend § 564.8(a) by removing ''§§ 563.170 and 563.172 of this part''

[1] 5 U.S.C. 553.

[2] Pub. L. 103–325, 12 U.S.C. 4802.

[3] Pub. L. 96–354, 5 U.S.C. 601.

and adding ''§ 563.170 of this chapter'' in its place.

PART 567—CAPITAL

■ 8. The authority citation for Part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

§ 567.5 [Amended]

■ 9. Amend § 567.5 by removing paragraphs (b)(1)(iv) and (v) and redesignating paragraphs (b)(1)(vi) and (vii) as paragraphs (b)(1)(iv) and (v).

§ 567.12 [Amended]

■ 10. Amend § 567.12 by removing paragraph (g) and redesignating paragraph (h) as paragraph (g).

PART 574—ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS

■ 11. The authority citation for Part 574 continues to read as follows:

Authority: 12 U.S.C. 1467a, 1817, 1831i.

§ 574.2 [Amended]

■ 12. Amend § 574.2(c)(3) by removing ''§ 563b.2(a)(39)'' and adding ''§ 563b.25 of this chapter'' in its place.

Dated: December 19, 2007.
By the Office of Thrift Supervision.

John M. Reich,
Director.

[FR Doc. E7–25000 Filed 12–31–07; 8:45 am]
BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE285; Special Conditions No. 23–225–SC]

Special Conditions: AmSafe Aviation; Inflatable Restraints Installation; Approved Model List of Normal and Utility Category Airplanes, and Agricultural Airplanes Certificated in the Normal/Utility/Restricted Category

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for AmSafe Aviation for a list of approved models. These airplanes, as modified by AmSafe Aviation, will have novel and unusual design features associated with the lap belt or shoulder harness portion of the safety belt, which contains an integrated airbag device. The applicable airworthiness regulations do not contain adequate and appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards.

DATES: The effective date of these special conditions is December 26, 2007. Comments must be received on or before February 1, 2008.

ADDRESSES: Mail two copies of your comments on these special conditions to: Federal Aviation Administration (FAA), Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE285, 901 Locust, Room 506, Kansas City, Missouri 64106, or you may deliver two copies to the Regional Counsel at the above address. Mark your comments: Docket No. CE285. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Stegeman, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4140, fax 816–329–4090, e-mail *Robert.Stegeman@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested persons to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Identify the regulatory docket or notice number and submit the comments in duplicate to the address specified above. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to CE285.'' The postcard will be date stamped and returned to the commenter.

Background

On March 8, 2007, AmSafe Aviation, 1043 North 47th Avenue, Phoenix, AZ 85043, applied for a supplemental type certificate for the installation of inflatable restraints in additional airplane models included herein that were certificated prior to the dynamic seat rule specified in 14 CFR part 23, § 23.562 and in agricultural airplanes.

AmSafe Aviation has previously applied for and obtained an Approved Model List (AML) Supplemental Type Certificate (STC) for the installation of Inflatable Two-, Three-, Four- or Five-Point Restraint Safety Belts with an Integrated Airbag Device in airplanes certificated in the Part 23 Normal/Utility categories.

The current AML STC does not allow airbags in agricultural aircraft. However, AmSafe recently provided the FAA data showing the installation of inflatable restraints in agricultural airplanes would have a positive safety effect. This special condition amends the existing AML STC to include additional normal category aircraft and to allow airbag installation in agricultural aircraft.

The inflatable restraint system is either a two-, three-, four-, or five-point safety belt restraint system consisting of a shoulder harness and a lap belt with an inflatable airbag attached to either the lap belt or the shoulder harness. The inflatable portion of the restraint system will rely on sensors to electronically activate the inflator for deployment. The inflatable restraint system will be made available on the pilot, co-pilot, and passenger seats of these airplanes.

If an emergency landing occurs, the airbag will inflate and provide a protective cushion between the occupant's head and structure within the airplane. This will reduce the potential for head and torso injury. The inflatable restraint behaves in a manner that is similar to an automotive airbag. However, in this case, the airbag is integrated into the lap or shoulder belt.

While airbags and inflatable restraints are standard in the automotive industry, the use of an inflatable restraint system is novel for aircraft operations.

The FAA has determined that this project will be accomplished on the basis of not lowering the current level of safety of the airplanes' original certification basis. The FAA has two primary safety concerns with the installation of airbags or inflatable restraints:

- That they perform properly under foreseeable operating conditions; and
- That they do not perform in a manner or at such times as to impede the pilot's ability to maintain control of the airplane or constitute a hazard to the airplane or occupants.

The latter point has the potential to be the more rigorous of the requirements. An unexpected deployment while conducting the takeoff or landing phases of flight may result in an unsafe condition. The unexpected deployment may either startle the pilot, or it may generate a force sufficient to cause a sudden movement of the control yoke. Either action could result in a loss of control of the airplane, the consequences of which are magnified due to the low operating altitudes during these phases of flight. This consideration is of special concern for aircraft designated for agricultural use because these aircraft spend a majority of their flight time at low altitudes. The FAA has considered this when establishing these special conditions.

The inflatable restraint system relies on sensors to electronically activate the inflator for deployment. These sensors could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of an inadvertent deployment must be considered in establishing the reliability of the system. AmSafe Aviation must show that the effects of an inadvertent deployment in flight are not a hazard to the airplane or that an inadvertent deployment is extremely improbable. Recent analysis provided to the FAA in a July 2006 AmSafe Aviation report based upon National Agricultural Aviation Association accident data shows that the risk of inadvertent deployment is outweighed by the potential safety improvement added by the enhanced restraint system. Given this data, the FAA believes that the improved restraint system will result in an increased margin of safety in comparison with existing designs.

In addition, general aviation and agricultural aircraft are susceptible to a large amount of cumulative wear and tear on a restraint system. It is likely that the potential for inadvertent deployment increases as a result of this cumulative damage. Therefore, the impact of wear and tear on inadvertent deployment must be considered. Due to the effects of this cumulative damage, a life limit must be established for the appropriate system components in the restraint system design.

There are additional factors to be considered to minimize the chances of inadvertent deployment. General aviation airplanes are exposed to a unique operating environment, since the same airplane may be used by both experienced and student pilots. The effect of this environment on inadvertent deployment must be understood. Therefore, qualification testing of the firing hardware/software must consider the following:

- The airplane vibration levels appropriate for general aviation and agricultural airplanes; and
- The inertial loads that result from typical flight/ground maneuvers, gusts, hard landings and flight maneuvering unique to both general aviation and agricultural aircraft operations.

Any tendency for the firing mechanism to activate as a result of these loads or acceleration levels is unacceptable.

Other influences on inadvertent deployment include high intensity electromagnetic fields (HIRF) and lightning. Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. To comply with HIRF and lightning requirements, the AmSafe Aviation inflatable restraint system is considered a critical system, since its inadvertent deployment could have a hazardous effect on the airplane.

Given the level of safety of the retrofitted airplane occupant restraints, the inflatable restraint system must show that it will offer an equivalent level of protection in the event of an emergency landing. If a deployment occurs, the restraint must still be at least as strong as a Technical Standard Order approved belt and shoulder harnesses. There is no requirement for the inflatable portion of the restraint to offer protection during multiple impacts, where more than one impact would require protection.

The inflatable restraint system must deploy and provide protection for each occupant during crash conditions as specified in the original certification basis. Therefore, the test emergency landing loads identified in the original certification basis of the airplane must be used to satisfy this requirement. It must be shown that the inflatable restraint will deploy and provide protection under crash conditions as specified in the original certification basis. Compliance will be demonstrated using the test condition specified in the original certification basis. It must be shown that the crash sensor will trigger when exposed to a rapidly applied deceleration, like an actual crash event. Therefore, the test crash pulses identified in § 23.562 must be used to satisfy this requirement, although, the peak ''G'' may be reduced to a level meeting the original certification requirements of the aircraft. Testing to these pulses will demonstrate that the crash sensor will trigger when exposed to a rapidly applied deceleration, like an actual crash event.

It is possible a wide range of occupants will use the inflatable restraint. Thus, the protection offered by this restraint should be effective for occupants that range from the fifth percentile female to the ninety-fifth percentile male.

In support of this operational capability, there must be a means to verify the integrity of this system before each flight. As an option, AmSafe Aviation can establish inspection intervals where they have demonstrated the system to be reliable between these intervals.

An inflatable restraint may be ''armed'' even though no occupant is using the seat. While there will be means to verify the integrity of the system before flight, it is also prudent to require that unoccupied seats with active restraints not constitute a hazard to any occupant. This will protect any individual performing maintenance inside the cockpit while the aircraft is on the ground. The restraint must also provide suitable visual warnings that would alert rescue personnel to the presence of an inflatable restraint system.

In addition, the design must prevent the inflatable seatbelt from being incorrectly buckled and/or installed such that the airbag would not properly deploy. As an alternative, AmSafe Aviation may show that such deployment is not hazardous to the occupant and will still provide the required protection.

The cabins of the various model airplanes identified in these special conditions are confined areas, and the FAA is concerned that noxious gasses may accumulate if an airbag deploys. When deployment does occur, either by design or inadvertently, there must not be a release of hazardous quantities of gas or particulate matter into the cockpit.

An inflatable restraint should not increase the risk already associated with

fire. Therefore, the inflatable restraint should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the inflator.

Finally, the airbag is likely to have a large volume displacement, and it may impede the egress of an occupant. Since the bag deflates to absorb energy, it is likely that the inflatable restraint would be deflated at the time an occupant would attempt egress. However, it is appropriate to specify a time interval after which the inflatable restraint may not impede rapid egress. Ten seconds has been chosen as reasonable time. This time limit will offer a level of protection throughout the impact event.

Special conditions for the installation of AAIR systems on other certificated airplanes have been issued and no substantive public comments were received. Since the same special conditions were issued multiple times for different model airplanes with no substantive public comments, the FAA began issuing direct final special conditions with an invitation for public comment. This was done to eliminate the waiting period for public comments and to allow AmSafe Aviation to proceed with the project.

These previous special conditions were typically issued for a single model airplane or for variants of a model from a single airplane manufacturer, and required dynamic testing of each AAIR system installation for showing compliance. Additionally, a previous AML STC was issued for AmSafe Aviation including numerous airplane models and manufacturers. Since AmSafe Aviation has previously demonstrated by dynamic testing, and has the supporting data, that the Electronics Module Assembly (EMA) and inflator assembly will function as intended in a simulated dynamic emergency landing, it is not necessary to repeat the test for each airplane model shown in these special conditions.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, AmSafe Aviation must show that affected airplane models, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in the Type Certificate Numbers listed below or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the original ''type certification basis'' and can be found in the Type Certificate Numbers listed below. The following models are covered by this special condition:

LIST OF ALL AIRPLANE MODELS AND APPLICABLE TCDS

Make	Model	TC holder	TCDS	Certification basis
1 Aerostar	PA–60–600 (Aerostar 600), PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), PA–60–700P (Aerostar 700P).	Aerostar Aircraft Corporation.	A17WE, Revision 22	14 CFR part 23.
1 All American	10A	All American Aircraft, Inc.	A–792	CAR 3.
1 American Champion (Champion).	402	American Champion Aircraft Corp.	A3CE, Revision 5	CAR 3.
1 American Champion (Bellanca), (Champion), (Aeronca).	7AC, 7ACA, 7EC, 7GCB, S7AC, S7EC, 7GCBA (L–16A), 7BCM, 7ECA, 7GCBC (L–16B), 7CCM, 7FC, 7HC, S7CCM, 7GC, 7JC, 7DC, 7GCA, 7KC, S7DC, 7GCAA, 7KCAB.	American Champion Aircraft Corp.	A–759, Revision 67	CAR 4a.
1 American Champion (Bellanca), (Trytek), (Aeronca).	11AC, S11AC, 11BC, S11BC	American Champion Aircraft Corp.	A–761, Revision 17	CAR 4a.
1 American Champion (Bellanca), (Trytek), (Aeronca).	11CC, S11CC	American Champion Aircraft Corp.	A–796, Revision 14	CAR 3.
1 VARGA (Morrisey)	2150, 2150A, 2180	Augustair, Inc	4A19, Revision 9	CAR 3.
1 Bellanca	14–13, 14–13–2, 14–13–3, 14–13–3W	Bellanca Aircraft Corporation.	A–773, Revision 10	CAR 4a.
1 Bellanca	14–9, 14–9L	Bellanca Aircraft Corporation.	TC716	CAR 4a.
1 Cessna	120, 140	Cessna Aircraft Company.	A–768, Revision 34	CAR 4a.
1 Cessna	140A	Cessna Aircraft Company.	5A2, Revision 21	CAR 3.
1 Cessna	150, 150J, 150A, 150K, 150B, A150K, 150C, 150L, 150D, A150L, 150E, 150M, 150F, A150M, 150G, 152, 150H, A152.	Cessna Aircraft Company.	3A19, Revision 44	CAR 3.
1 Cessna	170, 170A, 170B	Cessna Aircraft Company.	A–799, Revision 54	CAR 3.
1 Cessna	172, 172I, 172A, 172K, 172B, 172L, 172C, 172M, 172D, 172N, 172E, 172P, 172F (USAF T–41A), 172Q, 172G, 172H (USAF T–41A).	Cessna Aircraft Company.	3A12, Revision 73	CAR 3.
1 Cessna	175, 175A, 175B, 175C, P172D, R172E (USAF T–41B) (USAF T–41C and D), R172F (USAF T–41D), R172G (USAF T–41C or D), R172H (USAF T–41D), R172J, R172K, 172RG.	Cessna Aircraft Company.	3A17, Revision 45	CAR 3.
1 Cessna	177, 177A, 177B	Cessna Aircraft Company.	A13CE, Revision 24	14 CFR part 23.

LIST OF ALL AIRPLANE MODELS AND APPLICABLE TCDS—Continued

Make	Model	TC holder	TCDS	Certification basis
1 Cessna	180, 180E, 180A, 180F, 180B, 180G, 180C, 180H, 180D, 180J, 180E, 180K.	Cessna Aircraft Company.	5A6, Revision 66	CAR 3.
1 Cessna	182, 182K, 182A, 182L, 182B, 182M, 182C, 182N, 182D, 182P, 182E, 182Q, 182F, 182R, 182G, R182, 182H, T182, 182J, TR182.	Cessna Aircraft Company.	3A13, Revision 64	CAR 3.
1 Cessna	185, A185E, 185A, A185F, 185B, 185C, 185D, 185E.	Cessna Aircraft Company.	3A24, Revision 37	CAR 3.
Cessna AgWagon	188, 188A, 188B, A188, A188A, A188B, T188C.	Cessna Aircraft Company.	A9CE, Revision 27	14 CFR part 23.
1 Cessna	190 (LC–126A,B,C), 195, 195A, 195B	Cessna Aircraft Company.	A–790, Revision 36	CAR 3.
1 Cessna	206, U206B, TP206D, P206, U206C, TP206E, P206A, U206D, TU206A, P206B, U206E, TU206B, P206C, U206F, TU206C, P206D, U206G, TU206D, P206E, TP206A, TU206E, U206, TP206B, TU206F, U206A, TP206C, TU206G.	Cessna Aircraft Company.	A4CE, Revision 43	CAR 3.
1 Cessna	208, 208A, 208B	Cessna Aircraft Company.	A37CE, Revision 12	14 CFR part 23.
1 Cessna	210, 210K, 210A, T210K, 210B, 210L, 210C, T210L, 210D, 210M, 210E, T210M, 210F, 210N, T210F, P210N, 210G, T210N, T210G, 210R, 210H, P210R, T210H, T210R, 210J, 210–5 (205), T210J, 210–5A (205A).	Cessna Aircraft Company.	3A21, Revision 46	CAR 3.
1 Cessna	310, 310J, 310A (USAF U–3A), 310J–1, 310B, E310J, 310C, 310K, 310D, 310L, 310E (USAF U–3B), 310N, 310F, 310P, 310G, T310P, 310H, 310Q, E310H, T310Q, 310I, 310R, T310R.	Cessna Aircraft Company.	3A10, Revision 62	CAR 3.
1 Cessna	320, 320F, 320–1, 335, 320A, 340, 320B, 340A, 320C, 320D, 320E.	Cessna Aircraft Company.	3A25, Revision 25	CAR 3.
1 Cessna	321 (Navy OE–2)	Cessna Aircraft Company.	3A11, Revision 6	CAR 3.
1 Cessna	336	Cessna Aircraft Company.	A2CE, Revision 7	CAR 3.
1 Cessna	337A (USAF 02B), T337E, 337B, 337F, M337B (USAF 02A), T337F, T337B, 337G, 337C, T337G, T337C, 337H, 337D, P337H, T337D, T337H, T337H–SP.	Cessna Aircraft Company.	A6CE, Revision 40	CAR 3/14 CFR part 23.
1 Cessna	401, 401A, 401B, 402, 402A, 402B, 402C, 411, 411A, 414, 414A, 421, 421A, 421B, 421C, 425.	Cessna Aircraft Company.	A7CE, Revision 46	CAR 3.
1 Cessna	404, 406	Cessna Aircraft Company.	A25CE, Revision 11	14 CFR part 23.
1 Cessna	441	Cessna Aircraft Company.	A28CE, Revision 12	14 CFR part 23.
1 Commander Aircraft	Model 112, Model 114, Model 112TC, Model 112B, Model 112TCA, Model 114A, Model 114B, Model 114TC.	Commander Aircraft Company.	A12SO, Revision 21	14 CFR part 23.
Diamond	DA20–A1, DA20–C1	Diamond Aircraft Industries, Inc.	TA4CH, Revision 14	14 CFR part 23.
1 Great Lakes	2T–1A, 2T–1A–1, 2T–1A–2	Great Lakes Aircraft Company, LLC.	A18EA, Revision 10	Aeronautical Bulletin No. 7–A.
1 Helio (Taylorcraft)	15A, 20	Helio Aircraft Corporation.	3A3, Revision 7	CAR 4a.
1 Learjet	23	Learjet Inc	A5CE, Revision 10	CAR 3.
1 Lockheed	402–2	Lockheed Aircraft International.	2A11, Revision 4	CAR 3.
1 Land-Air (TEMCO), (Luscombe).	11A, 11E	Luscombe Aircraft Corporation.	A–804, Revision 14	CAR 3.

LIST OF ALL AIRPLANE MODELS AND APPLICABLE TCDS—Continued

Make	Model	TC holder	TCDS	Certification basis
1 Maule	Bee Dee M–4, M–5–180C, MXT–7–160, M–4–180V, M–4 M–5–200, MX–7–180A, M–4C, M–5–210C, MXT–7–180A, M–4S, M–5–210TC, MX–7–180B, M–4T, M–5–220C, M–7–235B, M–4–180C, M–5–235C, M–7–235A, M–4–180S, M–6–180, M–7–235C, M–4–180T, M–6–235, MX–7–180C, M–4–210, M–7–235, M–7–260, M–4–210C, MX–7–235, MT–7–260, M–4–210S, MX–7–180, M–7–260C, M–4–210T, MX–7–420, M–7–420AC, M–4–220, MXT–7–180, MX–7–160C, M–4–220C, MT–7–235, MX–7–180AC, M–4–220S, M–8–235, M–7–420A, M–4–220T, MX–7–160, MT–7–420.	Maule Aerospace Technology, Inc.	3A23, Revision 30	CAR 3.
1 Mooney	M20, M20A, M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K (Up to S/N 25–2000), M20L.	Mooney Airplane Company, Inc.	2A3, Revision 47	CAR 3.
1 Interceptor (Aero Commander) (Meyers).	200, 200A, 200B, 200C, 200D, 400	Prop-Jets, Inc	3A18, Revision 16	CAR 3.
1 Beech	35–33, J35, 35–A33, K35, 35–B33, M35, 35–C33, N35, 35–C33A, P35, E33, S35, E33A, V35, E33C, V35A, F33, V35B, F33A, 36, F33C, A36, G33, A36TC, H35, B36TC, G36.	Raytheon Aircraft Company.	3A15, Revision 90	CAR 3.
1 Beech	45 (YT–34), A45 (T–34A, B–45), D45 (T–34B)	Raytheon Aircraft Company.	5A3, Revision 25	CAR 03.
1 Beech	19A, B23, B19, C23, M19A, A24, 23, A24R, A23, B24R, A23A, C24R, A23–19, A23–24.	Raytheon Aircraft Company.	A1CE, Revision 34	CAR 3.
1 Beech	3N, 3NM, 3TM, JRB–6, D18C, D18S, E18S, E18S–9700, G18S, H18, C–45G, TC–45G, C–45H, TC–45H, TC–45J or UC–45J (SNB–5), RC–45J (SNB–5P).	Raytheon Aircraft Company.	A–765, Revision 74	CAR 03.
1 Beech	35, A35, E35, B35, F35, C35, G35, D35, 35R	Raytheon Aircraft Company.	A–777, Revision 57	CAR 03.
1 Raytheon	200, A100–1 (U–21J), 200C, A200 (C–12A), 200CT, A200 (C–12C), 200T, A200C (UC–12B), B200, A200CT (C–12D), B200C, A200CT (FWC–12D), B200CT, A200CT (C–12F), B200T, A200CT (RC–12D), 300, A200CT (RC–12G), 300LW, A200CT (RC–12H), B300, A200CT (RC–12K), B300C, A200CT (RC–12P), 1900, A200CT (RC–12Q), 1900C, B200C (C–12F), 1900D, B200C (UC–12M), B200C (C–12R), B200C (UC–12F), 1900C (C–12J).	Raytheon Aircraft Company.	A24CE, Revision 91	14 CFR part 23.
1 Beech	B95A, D55, D95A, D55A, E95, E55, 95–55, E55A, 95–A55, 56TC, 95–B55, A56TC, 95–B55A, 58, 95–B55B (T–42A), 58A, 95–C55, 95, 95–C55A, B95, G58.	Raytheon Aircraft Company.	3A16, Revision 81	CAR 3.
1 Beech	60, A60, B60	Raytheon Aircraft Company.	A12CE, Revision 23	14 CFR part 23.
1 Beech	58P, 58PA, 58TC, 58TCA	Raytheon Aircraft Company.	A23CE, Revision 14	14 CFR part 23.
1 Cessna	CESSNA F172D, CESSNA F172E, CESSNA F172F, CESSNA F172G, CESSNA F172H, CESSNA F172K, CESSNA F172L, CESSNA F172M, CESSNA F172N, CESSNA F172P.	Reims Aviation S.A	A4EU, Revision 11	CAR 10/CAR 3.
1 Socata	TB 9, TB 10, TB 20, TB 21, TB 200	SOCATA—GROUPE AEROSPATIALE.	A51EU, Revision 14	14 CFR part 23.
1 Pitts	S–1S, S–1T, S–2, S–2A, S–2S, S–2B, S–2C	Sky International Inc. (Aviat Aircraft, Inc.).	A8SO, Revision 21	14 CFR part 23.
1 Taylorcraft	19, F19, F21, F21A, F21B, F22, F22A, F22B, F22C.	Taylorcraft Aviation LLC.	1A9, Revision 19	CAR 3.
1 Taylorcraft	BC, BCS12–D, BCS, BC12–D1, BC–65, BCS12–D1, BCS–65, BC12D–85, BC12–65 (Army L–2H), BCS12D–85, BCS12–65, BC12D–4–85, BC12–D, BCS12D–4–85.	Taylorcraft Aviation, LLC.	A–696, Revision 22	CAR 04.
1 Taylorcraft	(Army L–2G) BF, BFS, BF–60, BFS–60, BF–65, BFS–65, (Army L–2K) BF 12–65, BFS–65.	Taylorcraft, Inc	A–699, Revision 5	CAR 4a.

LIST OF ALL AIRPLANE MODELS AND APPLICABLE TCDS—Continued

Make	Model	TC holder	TCDS	Certification basis
1 Luscombe	8, 8D, 8A, 8E, 8B, 8F, 8C, T–8F	The Don Luscombe Aviation History Foundation, Inc.	A–694, Revision 23	CAR 4a.
Sierra Hotel Aero, Inc. (Navion).	Navion (L–17A), Navion A (L–17B) (L–17C), Navion B, Navion D, Navion E, Navion F, Navion G, Navion H.	Sierra Hotel Aero, Inc	A–782, Revision 51	CAR 3.
Piper	J–3	Piper Aircraft Inc	ATC 660, Revision 0	Not listed.
Piper	J3C–40, J3C–50, J3C–50S, J3C–65, J3C–65S, PA–11, PA–11S.	Piper Aircraft Inc	A–691, Revision 33	CAR 4a.
FS 2003 Corporation (Piper).	PA–12, PA–12S	FS 2003 Corporation	A–780, Revision 13	CAR 3.
FS 2002 Corporation (Piper).	PA–14	FS 2002 Corporation	A–797, Revision 11	CAR 3.
Piper	PA–15	Piper Aircraft Inc	A–800, Revision 11	CAR 3.
Piper	PA–16, PA–16S	Piper Aircraft Inc	1A1, Revision 13	CAR 3.
Piper	PA–17	Piper Aircraft Inc	A–805, Revision 12	CAR 3.
2 Piper	PA–18, PA–18S, PA–18A, PA–18S "125", PA–18AS "125", PA–18A "135", PA–18S "135", PA–18AS "135", PA–18 "150", PA–18A "150", PA–18S "150", PA–18AS "150", PA–19S.	The New Piper Aircraft, Inc.	1A2, Revision 37	CAR 3.
Piper	PA–20, PA–20–115, PA–20–135, PA–20S, PA–20S–115, PA–20S–135.	Piper Aircraft Inc	1A4, Revision 24	CAR 3.
Piper	PA–22, PA–22–108, PA–22–135, PA–22–150, PA–22–160, PA–22S–135, PA–22S–150, PA–22S–160.	Piper Aircraft Inc	1A6, Revision 34	CAR 3.
Piper	PA–23, PA–23–160, PA–23–235, PA–23–250	Piper Aircraft Inc	1A10, Revision 51	CAR 3.
Piper	PA–24, PA–24–250, PA–24–260, PA–24–400	Piper Aircraft Inc	1A15, Revision 34	CAR 3.
1 Piper	PA–28–140, PA–28–151, PA–28–150, PA–28–161, PA–28–160, PA–28–181, PA–28–180, PA–28R–201, PA–28–235, PA–28R–201T, PA–28S–160, PA–28–236, PA–28S–180, PA–28RT–201, PA–28R–180, PA–28RT–201T, PA–28R–200, PA–28–201T.	The New Piper Aircraft, Inc.	2A13, Revision 47	CAR 3.
1 Piper	PA–30, PA–39, PA–40	The New Piper Aircraft, Inc.	A1EA, Revision 16	CAR 3.
1 Piper	PA–32–260, PA–32R–301 (SP), PA–32–300, PA–32R–301 (HP), PA–32S–300, PA–32R–301T, PA–32R–300, PA–32–301, PA–32RT–300, PA–32–301T, PA–32RT–300T, PA–32–301FT, PA–32–301XTC.	The New Piper Aircraft, Inc.	A3SO, Revision 29	CAR 3.
1 Piper	PA–34–200, PA–34–200T, PA–34–220T	The New Piper Aircraft, Inc.	A7SO, Revision 16	14 CFR part 23.
1 Piper	PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–31P–350.	The New Piper Aircraft, Inc.	A8EA, Revision 22	CAR 3.
1 Piper	PA–36–285, PA–36–300, PA–36–375	The New Piper Aircraft, Inc.	A9SO, Revision 9	14 CFR part 23.
1 Piper	PA–36–285, PA–36–300, PA–36–375	The New Piper Aircraft, Inc.	A10SO, Revision 12	14 CFR part 21/ 14 CFR part 23.
1 Piper	PA–38–112	The New Piper Aircraft, Inc.	A18SO, Revision 4	14 CFR part 23.
1 Piper	PA–44–180, PA–44–180T	The New Piper Aircraft, Inc.	A19SO, Revision 9	14 CFR part 23.
1 Piper	PA–31, PA–31–300, PA–31–325, PA–31–350	The New Piper Aircraft, Inc.	A20SO, Revision 10	CAR 3.
1 Piper	PA–42, PA–42–720, PA–42–1000	The New Piper Aircraft, Inc.	A23SO, Revision 17	14 CFR part 23.
1 Piper	PA–46–310P, PA–46–350P, PA–46–500TP	The New Piper Aircraft, Inc.	A25SO, Revision 14	14 CFR part 23.
1 Tiger Aircraft LLC (American General).	AA–1, AA–1A, AA–1B, AA–1C	Tiger Aircraft LLC	A11EA, Revision 10	14 CFR part 23.
1 Tiger Aircraft	AA–5, AA–5A, AA–5B, AG–5B	Tiger Aircraft LLC	A16EA, Revision 13	CFR part 23.
1 Twin Commander	500, 500–A, 500–B, 500–U, 520, 560, 560–A, 560–E, 500–S.	Twin Commander Aircraft Corporation.	6A1, Revision 45	CAR 3.
1 Twin Commander	560–F, 681, 680, 690, 680E, 685, 680F, 690A, 720, 690B, 680FL, 690C, 680FL(P), 690D, 680T, 695, 680V, 695A, 680W, 695B.	Twin Commander Aircraft Corporation.	2A4, Revision 46	CAR 3.
1 Univair (Stinson)	108, 108–1, 108–2, 108–3, 108–5	Univair Aircraft Corporation.	A–767, Revision 27	CAR 3.

LIST OF ALL AIRPLANE MODELS AND APPLICABLE TCDS—Continued

Make	Model	TC holder	TCDS	Certification basis
1 Univair	(ERCO) 415–D, (ERCO) E, (ERCO) G, (Forney) F–1, (Forney) F–1A, (Alon) A–2, (Alon) A2–A, (Mooney) M10.	Univair Aircraft Corporation.	A–787, Revision 33	CAR 3.
1 Univair (Mooney)	(ERCO) 415–C, (ERCO) 415–CD	Univair Aircraft Corporation.	A–718, Revision 29	CAR 4a.

The following aircraft are certified in the restricted category:

LIST OF ALL AIRPLANE MODELS AND APPLICABLE TCDS

Make	Model	TC holder	TCDS	Certification basis
Air Tractor	AT–250, AT–300, AT–301, AT–302, AT–400, AT–400A.	Air Tractor, Inc	A9SW, Revision 12	14 CFR part 23.
Air Tractor	AT–401, AT–401A, AT–401B, AT–402, AT–402A, AT–402B, AT–501, AT–502, AT–502A, AT–502B, AT–503, AT–503A.	Air Tractor, Inc	A17SW, Revision 10	14 CFR part 23.
Air Tractor	AT–802A, AT–802, AT–602	Air Tractor, Inc	A19SW, Revision 4	14 CFR part 23.
Allied Ag Cat	G–164, G–164A, G–164B, G–164B with 73", G–164B–15T, G–164B–34T, G–164B–20T, G–164C, G–164D, G–164D with 73" wing gap.	Allied Ag Cat Productions, Inc.	1A16, Revision 24	CAR 8.
Gippsland Aeronautics	GA200	Gippsland Aeronautics Pty. Ltd.	A00001LA, Revision 1	14 CFR part 23.
2 Piper	PA–18A, PA–18A "135", PA–18A "150"	The New Piper Aircraft, Inc.	AR–7, Revision 11	CAR 8.
LAVIA S.A. (Piper)	PA–25, PA–25–235, PA–25–260	Latino Americana De Aviación (LAVIA) S.A.	2A10, Revision 24	CAR 8.
Thrush Aircraft, Inc. (Snow, Rockwell, Ayres).	S–2B, S–2C, 600–S2C	Thrush Aircraft, Inc	2A7, Revision 16	CAR 8.
Thrush Aircraft, Inc. (Snow, Rockwell, Ayres).	600 S–2D, S–2R, S2R–T34, S2R–T15, S2R–T11, S2R–R3S, S2R–R1340.	Thrush Aircraft, Inc	A3SW, Revision 18	CAR 3.
Thrush Aircraft, Inc. (Snow, Rockwell, Ayres).	600 S2D, S2R–R1340, S2R–G10, S–2R, S2R–R1820, S2R–G5, S2R–T34, S2R–T65, S2R–G1, S2R–T15, S2RHG–T65, S2RHG–T34, S2R–R3S, S2R–T45, S2R–T660, S2R–T11, S2R–G6.	Thrush Aircraft, Inc	A4SW, Revision 28	CAR 8.
Weatherly	620, 620TP, 620A, 620B, 620B–TG	Weatherly Aircraft Company.	A26WE, Revision 7	14 CFR part 23.

Aircraft identified with a 1 have special conditions for AmSafe Aviation Inflatable Restraints published under Special Conditions 23–182–SC.

Piper PA–18A, PA–18A "135" and PA–18A "150" (identified with a 2) are type certificated in Normal/Utility Category on TCDS 1A2 and in Restricted Category on TCDS AR–7. The same aircraft may be operated under either TCDS in accordance with the restrictions listed on TCDS AR–7.

For all the models listed above, the certification basis also includes all exemptions, if any; equivalent level of safety findings, if any; and special conditions not relevant to the special conditions adopted by this rulemaking action.

The Administrator has determined that the applicable airworthiness regulations (i.e., part 23 as amended) do not contain adequate or appropriate safety standards for the AmSafe Aviation, inflatable restraint as installed on these models because of a novel or unusual design feature. Therefore, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to that model under the provisions of § 21.101.

Novel or Unusual Design Features

The various airplane models will incorporate the following novel or unusual design feature:

The AmSafe Aviation Inflatable Two-, Three-, Four-, or Five-Point Restraint Safety Belt with an Integrated Airbag Device.

The purpose of the airbag is to reduce the potential for injury in the event of an accident. In a severe impact, an airbag will deploy from the restraint, in a manner similar to an automotive airbag. The airbag will deploy between the head of the occupant and airplane interior structure. This will, therefore, provide some protection to the head of the occupant. The restraint will rely on sensors to electronically activate the inflator for deployment.

The Code of Federal Regulations state performance criteria for seats and restraints in an objective manner.

However, none of these criteria are adequate to address the specific issues raised concerning inflatable restraints. Therefore, the FAA has determined that, in addition to the requirements of part 21 and part 23, special conditions are needed to address the installation of this inflatable restraint.

Accordingly, these special conditions are adopted for the various airplane models equipped with the AmSafe Aviation, two-, three-, four-, or five-point inflatable restraint. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Applicability

As discussed above, these special conditions are applicable to the Approved Model List (AML) above. Should AmSafe Aviation apply at a later date for a supplemental type certificate to modify any other model included on the type certificates listed above to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the previously identified airplane models. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for these airplane models, as modified by AmSafe Aviation, is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

The FAA has determined that this project will be accomplished on the basis of not lowering the current level of safety of the occupant restraint system for the airplane models listed in these special conditions. Accordingly, the FAA is issuing the following special conditions as part of the type certification basis for these models, as modified by AmSafe, Aviation.

Inflatable Two-, Three-, Four-, or Five-Point Restraint Safety Belt with an Integrated Airbag Device Installed in an Airplane Model

1a. It must be shown that the inflatable restraint will provide restraint protection under the emergency landing conditions specified in the original certification basis of the airplane. Compliance will be demonstrated using the static test conditions specified in the original certification basis for each airplane.

1b. It must be shown that the crash sensor will trigger when exposed to a rapidly applied deceleration, like an actual emergency landing event. Therefore, compliance may be demonstrated using the deceleration pulse specified in para. 23.562, which may be modified as follows:

I. The peak longitudinal deceleration may be reduced; however, the onset rate of the deceleration must be equal to or greater than the emergency landing pulse identified in para. 23.562.

II. The peak longitudinal deceleration must be above the deployment threshold of the sensor, and equal or greater than the forward static design longitudinal load factor required by the original certification basis of the airplane.

2. The inflatable restraint must provide adequate protection for each occupant. In addition, unoccupied seats that have an active restraint must not constitute a hazard to any occupant.

3. The design must prevent the inflatable restraint from being incorrectly buckled and/or incorrectly installed such that the airbag would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required protection.

4. It must be shown that the inflatable restraint system is not susceptible to inadvertent deployment as a result of wear and tear or the inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings) that are likely to be experienced in service.

5. It must be extremely improbable for an inadvertent deployment of the restraint system to occur, or an inadvertent deployment must not impede the pilot's ability to maintain control of the airplane or cause an unsafe condition (or hazard to the airplane). In addition, a deployed inflatable restraint must be at least as strong as a Technical Standard Order (C22g or C114) restraint.

6. It must be shown that deployment of the inflatable restraint system is not hazardous to the occupant or will not result in injuries that could impede rapid egress. This assessment should include occupants whose restraints are loosely fastened.

7. It must be shown that an inadvertent deployment that could cause injury to a sitting person is improbable. In addition, the restraint must also provide suitable visual warnings that would alert rescue personnel to the presence of an inflatable restraint system.

8. It must be shown that the inflatable restraint will not impede rapid egress of the occupants 10 seconds after its deployment.

9. For the purposes of complying with HIRF and lightning requirements, the inflatable restraint system is considered a critical system since its deployment could have a hazardous effect on the airplane.

10. It must be shown that the inflatable restraints will not release hazardous quantities of gas or particulate matter into the cabin.

11. The inflatable restraint system installation must be protected from the effects of fire such that no hazard to occupants will result.

12. There must be a means to verify the integrity of the inflatable restraint activation system before each flight or it must be demonstrated to reliably operate between inspection intervals.

13. A life limit must be established for appropriate system components.

14. Qualification testing of the internal firing mechanism must be performed at vibration levels appropriate for a general aviation airplane.

Issued in Kansas City, Missouri on December 26, 2007.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–25465 Filed 12–31–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM364 Special Conditions No. 25–356-SC]

Special Conditions: Boeing Model 787–8 Airplane; Systems and Data Networks Security—Isolation or Protection From Unauthorized Passenger Domain Systems Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 787–8 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These novel or unusual design features are associated with connectivity of the passenger domain computer systems to the airplane critical systems and data networks. For these design features, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for protection and security of airplane systems and data networks against unauthorized access. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing standards. Additional special conditions will be issued for other novel or unusual design features of the Boeing Model 787–8 airplanes.

DATES: *Effective Date:* February 1, 2008.

FOR FURTHER INFORMATION CONTACT: Will Struck, FAA, Airplane and Flight Crew Interface, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2764; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 2003, Boeing applied for an FAA type certificate for its new Boeing Model 787–8 passenger airplane. The Boeing Model 787–8 airplane will be an all-new, two-engine jet transport airplane with a two-aisle cabin. The maximum takeoff weight will be 476,000 pounds, with a maximum passenger count of 381 passengers.

Type Certification Basis

Under provisions of 14 Code of Federal Regulations (CFR) 21.17, Boeing must show that Boeing Model 787–8 airplanes (hereafter referred to as ''the 787'') meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–117, except §§ 25.809(a) and 25.812, which will remain at Amendment 25–115. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the 787 because of a novel or unusual design feature, special conditions are prescribed under provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the 787 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of part 36. The FAA must also issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The digital systems architecture for the 787 consists of several networks connected by electronics and embedded software. This proposed network architecture is used for a diverse set of functions, including the following:

1. Flight-safety-related control and navigation and required systems (Aircraft Control Domain).
2. Airline business and administrative support (Airline Information Domain).
3. Passenger entertainment, information, and Internet services (Passenger Information and Entertainment Domain).

The proposed architecture of the 787 is different from that of existing production (and retrofitted) airplanes. It allows new kinds of passenger connectivity to previously isolated data networks connected to systems that perform functions required for the safe operation of the airplane. Because of this new passenger connectivity, the proposed data network design and integration may result in security vulnerabilities from intentional or unintentional corruption of data and systems critical to the safety and maintenance of the airplane. The existing regulations and guidance material did not anticipate this type of system architecture or electronic access to aircraft systems that provide flight critical functions. Furthermore, 14 CFR regulations and current system safety assessment policy and techniques do not address potential security vulnerabilities that could be caused by unauthorized access to aircraft data buses and servers. Therefore, special conditions are imposed to ensure that security, integrity, and availability of the aircraft systems and data networks are not compromised by certain wired or wireless electronic connections between airplane data buses and networks.

Discussion of Comments

Notice of Proposed Special Conditions No. 25–07–01-SC for the 787 was published in the **Federal Register** on April 13, 2007 (72 FR 18597). One comment was received from the Air Line Pilots Association, International (ALPA) and several from Airbus.

- *ALPA Comment:* ALPA strongly recommended that a backup means must also be provided for the flightcrew to disable passengers' ability to connect to these specific systems.

FAA Response: These special conditions apply to the design of airplane systems and networks, and would not preclude a security mitigation strategy that provides a means for the flightcrew to disable passenger connectivity to the networks or to disable access to specific systems connected to the airplane networks. However, the FAA would prefer not to dictate specific design features to the applicant but rather to allow applicants the flexibility to determine the appropriate security protections and means to address all potential vulnerabilities and risks posed by allowing this access. For example, the security protection response to a suspected network security violation could result in—

- The system automatically disabling passenger access to the network or certain functions,
- Flight deck annunciation and flightcrew disabling of passenger access to certain systems or capabilities, or
- Various combinations of the above.
- *AIRBUS General Comment 1:* In Airbus's opinion these special conditions leave too much room for interpretation, and related guidance and acceptable means of compliance should be developed in an advisory circular for use by future applicants.

FAA Response: We agree that guidance is necessary and specific, detailed compliance guidelines and

criteria have been developed for this aircraft certification program, specific to this airplane's network architecture and design, providing initial guidance on an acceptable means of compliance for the 787. Additionally, the FAA intends to participate in an industry committee chartered with developing acceptable means of compliance to address aircraft network security issues, and hopes to endorse the results of the work of that committee by issuing an advisory circular (AC). Until such time as guidance is developed for a general means of compliance for network security protection, these special conditions and the agreed-to guidance are imposed on this specific network architecture and design.

• *AIRBUS Comment (a):* Airbus stated that the requirement in the proposed special conditions is not ''high level'' enough because it considers a solution or an architecture. Airbus believes that criteria or assumptions for defining the domains are missing (for example, systems criticality, interfaces, rationale for the need to protect one domain from another one, trust levels * * *). The commenter maintained that the Aircraft Control Domain (ACD), Airline Information Domain (AID) and Passenger Information and Entertainment Domain (PIED) need to be precisely defined.

FAA Response: We do not agree that the requirement in the proposed special conditions prescribes a solution or an architecture. These special conditions and the acceptable means of compliance were developed based on the Boeing-proposed 787 network architecture and connectivity between the Passenger Information and Entertainment Domain and the Aircraft Control Domain and Airline Information Domain. The applicant is responsible for the design of the airplane network and systems architecture and for ensuring that potential security vulnerabilities of providing passenger access to airplane networks and systems are mitigated to an appropriate level of assurance, depending on the potential risk to the airplane and occupant safety. This responsibility is similar to that entailed in the current system safety assessment process of 14 CFR 25.1309. (See also AC 25.1309–1A and the ARAC-recommended Arsenal version of this AC, which can be found at *http://www.faa.gov/regulations_policies/rulemaking/committees/arac/media/tae/TAE_SDA_T2.pdf*, and SAE (Society of Automotive Engineers) ARP (Aerospace Recommended Practice) 4754). We believe the general definitions for the airplane network ''domains'' are sufficient for these special conditions.

• *AIRBUS Comment (b):* Airbus stated that in the sentence ''The design shall prevent all inadvertent or malicious changes to, and all adverse impacts * * *'', the wording ''shall prevent ALL'' can be interpreted as a zero allowance. According to the commenter, demonstration of compliance with such a requirement during the entire life cycle of the aircraft is quite impossible because security threats evolve very rapidly. The only possible solution to such a requirement would be to physically segregate the Passenger Information and Entertainment Domain from the other domains. This would mean, for example, no shared resources like SATCOM (satellite communications), and no network connections. Airbus maintained that such a solution is not technically and operationally viable, saying that a minimum of communications is always necessary. Airbus preferred a less categorical requirement which allows more flexibility and does not prevent possible residual vulnerabilities if they are assessed as acceptable from a safety point of view. Airbus said this security assessment could be based on a security risk analysis process during the design, validation, and verification of the systems architecture that assesses risks as either acceptable or requiring mitigations even through operational procedures if necessary. Airbus noted that this process, based on similarities with the SAE ARP 4754 safety process, is already proposed by the European Organization for Civil Aviation Equipment (EUROCAE) Working Group 72 for consideration of safety risks posed by security threats or by the FAA through the document ''National Airspace System Communication System Safety Hazard Analysis and Security Threat Analysis,'' version v1.0, dated Feb. 21, 2006. Airbus said such a security risk analysis process could be used as an acceptable means of compliance addressed by an advisory circular.

FAA Response: We agree that Airbus's interpretation of zero allowance for any ''inadvertent or malicious changes to, and all adverse impacts'' to airplane systems, networks, hardware, software, and data is correct. However, this does not prevent allowing appropriate access if the design incorporates robust security protection means and procedures to prevent inadvertent and intentional actions that could adversely impact airplane systems, functionality, and airworthiness. Airbus commented that ''a minimum of communications is always necessary.'' Unauthorized users, however, must not be allowed communication access to aircraft systems and equipment in such a way that inadvertent or intentional actions can have any adverse impact on the aircraft systems, equipment, and data. Technology exists which allows sharing of resources without allowing unauthorized access and inappropriate actions to systems and data. As previously mentioned, detailed compliance guidelines and criteria, specific to the 787 network architecture, have been developed into an acceptable means of compliance for this airplane certification program. In addition, we intend to participate in future related industry committees (such as SAE S–18, which is currently revising ARP 4754, EUROCAE Working Group 72, and RTCA (RTCA, Incorporated; formerly Radio Technical Commission for Aeronautics) Special Committee 216). These groups will be developing additional aircraft network security guidance, and we hope to be able to endorse the results of their efforts as an acceptable means of compliance for network security issues on future aircraft certification programs.

• *AIRBUS Comment (c):* Airbus said that this requirement is limited to the design (''The design shall prevent all inadvertent or malicious changes * * * ''), but security solutions are always dependent on organizational procedures. Airbus said that because the efficiency of a security solution relies on the weakest link in the overall chain (design, operations, organizations, processes, * * *), the robustness of the design may be impaired (by, for instance, cabin crew interfaces being used by unauthorized passengers) if equivalent security requirements are not mandated for other involved parties, as, for example, through an operational or maintenance approval.

FAA Response: The applicant is responsible for developing a design compliant with these special conditions and other applicable regulations. The design may include specific technology and architecture features, as well as operator requirements, operational procedures and security measures, and maintenance procedures and requirements, to ensure an appropriate implementation that can be properly used and maintained to ensure safe operations and continued operational safety. These special conditions do not preclude organizational, process, operational, monitoring, or maintenance procedures and requirements from being part of the design to ensure security protection. As with other aircraft models, the operator is obligated to

operate and maintain the aircraft in conformance with regulations and with requirements for operation and maintenance of the product.

• *AIRBUS Comment (d):* Airbus noted that the special conditions consider only interference between the Passenger Information and Entertainment Domain (PIED) and the Airline Information Domain or Aircraft Control Domain. It notes there is no requirement for protecting the Aircraft Control Domain from the Airline Information Domain, if this one is considered less trusted than the Aircraft Control Domain. As an example, it said that the Airline Information Domain could implement portable electronic flight bags.

FAA Response: These special conditions address only the interfaces between the passenger domain (PIED) and other aircraft systems and networks. Other interfaces and accesses are addressed by current regulations and policy, and by another proposed special conditions.

• *AIRBUS Comment (e):* Airbus said that, depending on the meaning of ''unauthorized external access,'' these special conditions may be redundant to proposed special conditions 25–07–02–SC (see comment ''b'' about 25–07–02–SC).

FAA Response: These special conditions are not redundant. The passenger PIED and its security implementation are part of the airplane model and type design, and are not considered ''external'' to the aircraft. In reviewing the Boeing-proposed 787 network architecture and design during development of these special conditions, we determined the need for two separate special conditions. To ensure appropriate security protection of the aircraft and its systems, one special condition was needed for access from the passenger domain, and one for access from sources external to the airplane.

• *AIRBUS proposed text revision:* Airbus proposed the following revised wording for these special conditions.

The applicant shall ensure that security threats from all points within the Passenger Information and Entertainment Domain, are identified and risk mitigation strategies are implemented to protect the Aircraft Control Domain and Airline Information Services Domain from adverse impacts reducing the aircraft safety.

FAA Response: As noted previously, the purpose of these special conditions is to ensure security protection from all inadvertent or malicious changes to, and all adverse impacts to, airplane systems, networks, hardware, software, and data from accesses through the passenger domain. We do not believe the commenter's proposal is specific enough to achieve this purpose, and we will retain the current wording.

Applicability

As discussed above, these special conditions are applicable to the 787. Should Boeing apply at a later date for a change to the type certificate to include another model on the same type certificate incorporating the same novel or unusual design features, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the 787. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 787–8 airplane.

The design shall prevent all inadvertent or malicious changes to, and all adverse impacts upon, all systems, networks, hardware, software, and data in the Aircraft Control Domain and in the Airline Information Domain from all points within the Passenger Information and Entertainment Domain.

Issued in Renton, Washington, on December 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–25467 Filed 12–31–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28688; Directorate Identifier 2005–SW–21–AD; Amendment 39–15312; AD 2007–26–10]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 430 helicopters that requires replacing a certain servo actuator-to-actuator support attachment bolt (bolt) with an airworthy bolt. This action also requires establishing a retirement life for certain bolts and recording the retirement life on a component history card or equivalent record. This amendment is prompted by further evaluation of certain fatigue-critical parts, resulting in establishing a life limit of 5,000 hours for the affected bolts. The actions specified by this AD are intended to prevent fatigue failure of the bolt and subsequent loss of control of the helicopter.

DATES: Effective February 6, 2008.

ADDRESSES: You may get the service information identified in this AD from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272.

Examining the Docket: You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://www.regulations.gov* or at the Docket Operations office, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on July 16, 2007 (72 FR 38797). That action proposed to require replacing a certain bolt with an airworthy bolt. That action also proposed establishing a retirement life for certain bolts and recording the retirement life on a component history card or equivalent record.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 430 helicopters, serial numbers 49001 through 49106. Transport Canada advises of the need to establish a new airworthiness life limitation of 5,000 hours for the three servo actuator support attachment bolts and to replace the three affected bolts.

Bell Helicopter Textron has issued Alert Service Bulletin No. 430–05–33, dated February 16, 2005 (ASB). The ASB introduces a retirement life of 5,000 hours for the bolts. The ASB states

that since these bolts have not been listed in the Helicopter Component Replace record, it is difficult to determine with accuracy the actual number of hours accumulated on fielded bolts. Also, the ASB states that Bell has elected to replace all the fielded bolts, part number (P/N) 50–047C8–31. Transport Canada classified this ASB as mandatory and issued AD No. CF–2005–09, dated April 14, 2005, to ensure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept us informed of the situation described above. We have examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed with two changes. We corrected a paragraph under the **ADDRESSES** section in the preamble to reflect the correct address for getting the service information. Also, we added a Note to the AD stating that there is service information that pertains to the subject of the AD. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

We estimate that this AD will affect 54 helicopters of U.S. registry, and the required actions will take about 2 work hours per helicopter to replace 3 bolts at an average labor rate of $80 per work hour. Required parts will cost about $243 for each bolt. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $ $48,006, assuming that the recordkeeping cost would be negligible.

Regulatory Findings

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

For the reasons discussed above, I certify that the 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 an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2007–26–10 Bell Helicopter Textron Canada: Amendment 39–15312. Docket No. FAA–2007–28688; Directorate Identifier 2005–SW–21–AD.

Applicability: Model 430 helicopters, serial numbers 49001 through 49106, with a servo actuator-to-actuator support attachment bolt (bolt), part number (P/N) 50–047C8–31, installed, which attaches the lower two cyclic servo actuators and the lower collective servo actuator to the three lower actuator supports, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the bolt and subsequent loss of control of the helicopter, do the following:

(a) Within 150 hours time-in-service (TIS), replace all three affected bolts, as depicted for one of these bolts in Figure 1 of this AD, with airworthy, zero-time bolts, P/N 50–047C8–31.

BILLING CODE 4910–13–P

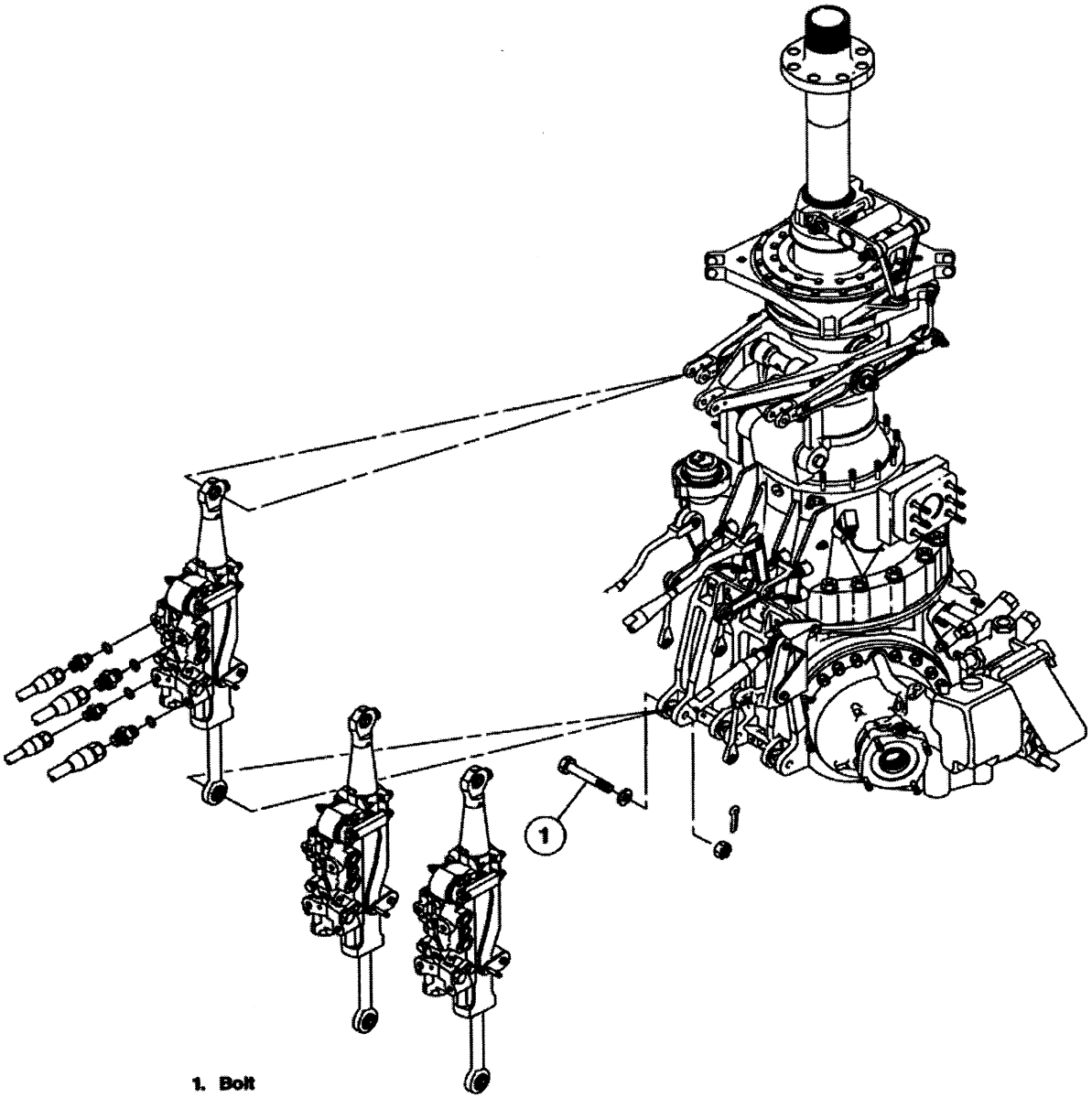

Figure 1

BILLING CODE 4910–13–C

Note 1: Only the right servo lower attach bolt (1) is shown. The collective and left cyclic servo lower attach bolts are also to be replaced. (This AD does not apply to the same part-numbered bolts at the upper end of each servo.)

Note 2: Bell Helicopter Textron Alert Service Bulletin No. 430–05–33, dated February 16, 2005, pertains to the subject of this AD.

(b) This AD revises the Airworthiness Limitations section of the maintenance manual by establishing a retirement life of 5000 hours TIS for each bolt.

(c) Record a 5000-hour TIS life limit for each bolt on the component history card or equivalent record.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, FAA, *ATTN:* Sharon Miles, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961 for information about previously approved alternative methods of compliance.

(e) This amendment becomes effective on February 6, 2008.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF 2005–09, dated April 14, 2005.

Issued in Fort Worth, Texas, on November 30, 2007.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E7–25389 Filed 12–31–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 700, 730, 740, 743, 744, 745, 746, 748, 750, 752, 754, and 774

[Docket No. 071011588–7712–02]

RIN 0694–AE15

Revisions and Technical Corrections to the Export Administration Regulations and the Defense Priorities and Allocations System Regulation

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by making the following changes: Removing the post office box address for the Bureau of Industry and Security (BIS), updating the contact information for the San Jose field office, reinserting missing footnotes in sections describing License Exceptions, removing certain non-Country Group D countries from Country Group D, correcting formatting in the supplement listing items subject to the military end-use license requirement for the People's Republic of China (PRC), correcting the Code of Federal Regulations legal authority citation for part 745 of the EAR, removing a reference to Libya under embargoed destinations, adding fax information for submitting a request for approval to submit applications electronically, clarifying the requirements for obtaining an Import Certificate or an End-User Statement, changing Validated End-User report requirements, amending the contact information for the Ministry of Commerce of the PRC, making a technical correction to shipping tolerances, and removing references to certain entries on the Commerce Control List. In addition, this rule amends the Defense Priorities and Allocations System (DPAS) Regulation by updating an office name and by removing a reference to a form.

DATE: This rule is effective January 2, 2008.

ADDRESSES: Although this is a final rule, comments are welcome and should be sent to *publiccomments@bis.doc.gov,* fax (202) 482–3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694–AE15 in all comments, and in the subject line of email comments. Comments on the collection of information should be sent to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: For questions related to amendments to the Export Administration Regulations, contact Steven Emme, Regulatory Policy Division, Bureau of Industry and Security, telephone: (202) 482–2440, e-mail: *semme@bis.doc.gov.* For questions related to amendments to the Defense Priorities and Allocations System Regulation, contact Liam McMenamin, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, telephone: (202) 482–2233.

SUPPLEMENTARY INFORMATION: This rule makes the following corrections to the Export Administration Regulations:

Address Changes—Removal of P.O. Box Address for BIS in Washington, DC and Change in Location for BIS San Jose Field Office

BIS will no longer accept materials sent to post office box 273 in Washington, DC. In lieu of P.O. Box 273, materials may be sent via courier to Room 2705, 14th Street and Pennsylvania Ave., NW., Washington, DC 20230. To reflect this update, this rule removes references to P.O. Box 273 in parts 730, 740, 743, 748, 752, 754, and 774 and replaces those references with Room 2705, where applicable.

Furthermore, this rule updates the address, phone number, and fax number for the San Jose field office in §§ 730.8 (how to proceed and where to get help) and 748.2 (obtaining forms; mailing addresses).

Part 740—Reinsertion of Footnotes

On March 25, 1996, BIS (then the Bureau of Export Administration, or BXA) published an interim rule (61 FR 12714) which rewrote and reorganized the Export Administration Regulations. The rewrite created part 740 for license exceptions, which included § 740.4 for temporary imports, exports and reexports (TMP) and § 740.7 for gift parcels and humanitarian donations (GFT). On December 4, 1996, BIS published a subsequent revision (61 FR 64272) to the EAR that redesignated TMP as § 740.8 and GFT as § 740.11. When TMP and GFT were redesignated, one footnote to paragraph (b)(1)(iv) in TMP (now § 740.9(b)(1)(iv)) and one footnote to paragraph (a)(1) in GFT (now § 740.12(a)(1)) were inadvertently omitted. This rule reinserts the footnote by ''Commerce Form 7513'' in § 740.9(b)(1)(iv) and the footnote by ''gift parcel'' in § 740.12(a)(1)).

Part 740—Removal of Certain Countries from Country Group D

Country Group D, as found in Supplement No. 1 to part 740, contains countries listed as countries of concern due to national security, nuclear, chemical and biological, and/or missile technology reasons. An ''x'' in a particular column indicates the reason(s) that applies to a particular country. On August 5, 1997, BIS (then BXA) published a final rule (62 FR 42047) which removed the ''x'' in the D:2 column for Algeria, Andorra, Comoros, Djibouti, Micronesia, and Vanuatu, to reflect their status as signatories of the Nuclear Non-Proliferation Treaty. As a result of that rule, those six countries did not have an ''x'' in any of the columns in Country Group D. However, the rule did not remove those countries' names from the list of countries in that country group. Therefore, this rule removes references to those six countries from Country Group D.

Part 744—Formatting Corrections

On June 19, 2007, BIS published a revision and clarification of export and reexport controls for the People's Republic of China (PRC). In that final rule, certain changes to part 744 did not format correctly. Specifically, paragraph (1)(ii) of Supplement No. 2 contained measurements that appeared in the **Federal Register** as ''3.18×106m'' and ''7.62×104m'' and paragraphs (3) and (5) of Supplement No. 2 contained mislabeled sub-paragraph numbers. This rule corrects those measurements to read ''3.18×10^6 m'' and ''7.62×10^4 m'' respectively, and it renumbers the sub-paragraphs of paragraphs (3) and (5).

Part 745—Legal Authorities Correction

On November 30, 2007, BIS published a final rule (72 FR 67636) updating the statements of legal authority for the EAR. This rule makes a correction to the authority for part 745 by removing ''Notice of October 27, 2006, 71 FR 64109 (October 31, 2006)'' and adding ''Notice of November 8, 2007, 72 FR 63963 (November 13, 2007)'' in its place. This correction makes no changes to the text of the EAR.

Part 746—Removal of Libya Reference and Revision to Iran Provisions

Section 746.1(a)(1) currently reads ''most other items * * * designated * * * 'EAR99', require a license to Cuba or Libya.'' On August 31, 2006, BIS published an interim final rule (71 FR 51714) that amended the EAR to allow EAR99 items to be exported or reexported to Libya without a license, subject to the end-user and end-use controls in part 744 of the EAR. As a result, this rule removes ''Libya'' from the second sentence of § 746.1(a)(1).

Part 748—Requesting Approval Via Fax to Submit Applications Electronically

Section 748.7(a) describes the authorization procedures by which an applicant may request approval to apply electronically for a license or classification request. Currently, § 748.7(a)(1) only allows submission of written requests for approval to submit applications and requests electronically to certain addresses listed in § 748.2(c). This rule amends § 748.7(a)(1) to include submission of written requests via fax, which will conform to actual practice.

Part 748—Clarification of Import Certificate and End-User Statement Requirements

On June 19, 2007, BIS published a final rule (72 FR 33646) that changed the requirements for submitting either an Import Certificate or an End-User Statement. This rule amends §§ 748.10(a) and 748.10(b) to clarify the applicability of the $50,000 threshold. For exports to countries listed in § 748.9(b)(2), an Import Certificate is required for commodities controlled for national security (NS) reasons for transactions valued over $50,000. For exports to the PRC, an End-User Statement is required for transactions exceeding $50,000 involving most commodities that require a license to the PRC for any reason. Exceptions to the $50,000 threshold for certain exports to the PRC have been consolidated into new § 748.10(b)(3). This rule does not add any additional requirements for Import Certificates or End-User Statements; it only reorganizes the existing provisions to enhance clarity.

Furthermore, this rule corrects § 748.10(b)(4) to remove ''software'' from the first sentence. As noted in § 748.9(a)(7), support documents are not required for license applications involving the export or reexport of software or technology. On September 22, 1998, BIS published an interim rule (63 FR 50516) which clarified ''a long-standing policy that no support documentation is required for exports of technology or software.'' That rule removed references to the exports of technology or software to certain destinations in § 748.10(b)(1) but did not remove the reference to software in § 748.10(b)(4).

Part 748—Changes to Validated End-User (VEU) Reporting Requirements and to the Contact Information for the Ministry of Commerce of the PRC

This final rule amends § 748.15(f)(1)(i) to no longer require exporters to submit the reports required under that section for VEUs because BIS already has access to that information. However, reexporters must continue to submit the annual reports as required by that section. Also, this final rule updates the contact information for the Ministry of Commerce, Department of Mechanic, Electronic and High Technology Industries of the PRC in Supplement No. 4 to part 748.

Part 750—Technical Correction to Shipping Tolerances

According to § 750.11(b)(1), items licensed by dollar value have no shipping tolerance in that one may not ship more than the total dollar value that is stated on the license. To determine if an item is license by dollar value, one may look to the ''Unit'' paragraph in the ECCN entry of the item. However, paragraph (b)(1) shows ''§ value'' as the appropriate indicator in the ''Unit'' paragraph to designate whether the item is licensed by dollar value. This rule changes ''§ value'' to the appropriate designation of dollar value, which is ''$ value''.

Part 774—Citation Corrections in ECCNs 2B999, 9E001, and 9E002

Export Control Classification Number (ECCN) 2B999 lists multiple ECCNs under Related Controls. ECCNs listed under Related Controls are cross-references to similar items that readers of the EAR need to be aware of when determining the proper classification of their item. One such ECCN listed under Related Controls in ECCN 2B999 is ECCN 1B109. However, ECCN 1B109 does not exist on the Commerce Control List. This rule corrects that citation by replacing that ECCN with 2B109.

Moreover, the headings of ECCNs 9E001 and 9E002 reference ECCN 9A001.c, which does not exist. On July 15, 2005, BIS published a final rule (70 FR 41094) that redesignated ECCN 9A001.c as ECCN 9A001.b. In order to reflect that change, this rule removes the references to ''9A001.c'' in ECCNs 9E001 and 9E002 and replaces those references with ''9A001.b.''

In addition, this rule makes the following correction to the Defense Priorities and Allocations System (DPAS) Regulation:

Part 700—Defense Priorities and Allocations System (DPAS) Technical Correction

This rule changes the name ''Office of Clearance and Support,'' referenced in § 700.21(a), to ''Office of Electricity Delivery and Energy Reliability'' to reflect the Department of Energy office currently assigned with the responsibility for reviewing applications for priority rating authority for projects believed to maximize domestic energy supplies. Also, this rule removes an erroneous reference in § 700.21(a) to DOE Form PR 437. The Department of Energy no longer uses DOE Form PR 437.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 15, 2007, 72 FR 46137 (August 16, 2007), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves a collection of information subject to the requirements of the PRA. This collection has previously been approved by OMB under control number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. BIS expects that this rule will not change that burden hour estimate.

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

4. BIS finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment for all provisions except those amendments to part 748 of the EAR related to VEU reporting requirements because it is unnecessary. These revisions are administrative in nature and do not affect the rights and obligations of the public. Because these revisions are not substantive changes to the EAR and to the DPAS, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. No other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule.

BIS finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring notice and the opportunity for public comment on the provision that amends Part 748 of the EAR related to VEU reporting requirements because it is unnecessary and contrary to the public interest. This rule amends the EAR to no longer require exporters to submit the reports required under § 748.15(f)(1)(i) for VEUs because BIS already requires the submission of that same information, and has access to that information, through other means. In order to eliminate any redundancy in the collection of this information, BIS amends its regulations to eliminate the submission of these reports. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is waived for good cause because the delay is contrary to the public interest. As stated above, BIS already requires the submission of information contained in the reports required under § 748.15(f)(1)(i) for VEUs, and has access to that information, through other means. In order to eliminate any redundancy in the collection of this information, BIS amends its regulations to eliminate the submission of these reports. No other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Steven Emme, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, Room 2705, 14th Street and Pennsylvania Ave., NW., Washington, DC 20230.

List of Subjects

15 CFR Part 700

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Parts 740, 748, and 750

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

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 745

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Parts 746 and 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, part 700 of the Defense Priorities and Allocations System Regulation (15 CFR part 700) and parts 730, 740, 743, 744, 745, 746, 748, 750, 752, 754, and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 700—[AMENDED]

■ 1. The authority citation for 15 CFR part 700 continues to read as follows:

Authority: Titles I and VII of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), Executive Order 12919, 59 FR 29525, 3 CFR, 1994 Comp. 901, and Executive Order 13286, 68 FR 10619, 3 CFR, 2003 Comp. 166; section 18 of the Selective Service Act of 1948 (50 U.S.C. App. 468), 10 U.S.C. 2538, 50 U.S.C. 82, and Executive Order 12742, 56 FR 1079, 3 CFR, 1991 Comp. 309; and Executive Order 12656, 53 FR 226, 3 CFR, 1988 Comp. 585.

■ 2. Section 700.21 is amended by revising paragraph (a) to read as follows:

§ 700.21 Application for priority rating authority.

(a) For projects believed to maximize domestic energy supplies, a person may request priority rating authority for scarce, critical, and essential supplies of materials, equipment, and services (related to the production of materials or equipment, or the installation, repair, or maintenance of equipment) by submitting a request to the Department of Energy. Further information may be obtained from the U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, 1000 Independence Avenue, SW., Washington, DC 20585.

* * * * *

PART 730—[AMENDED]

■ 3. The authority citation for 15 CFR part 730 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p.133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3

CFR, 1998 Comp., p.208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

■ 4. Section 730.8 is amended by revising the third location entry at the end of paragraph (c) for the ''U.S. Export Assistance Center'' to read as follows:

§ 730.8 How to proceed and where to get help.

* * * * *

(c) * * *

U.S. Export Assistance Center, Bureau of Industry and Security, 160 W. Santa Clara Street, Suite 725, San Jose, California 95113, Tel: (408) 998–8805 or (408) 998–8806, Fax: (408) 998–8677.

■ 5. Supplement No. 2 to part 730—Technical Advisory Committees, is amended by revising the first sentence of paragraph (b)(1) to read as follows:

Supplement No. 2 to Part 730—Technical Advisory Committees

* * * * *

(b) * * *

(1) *Form and substance of requests.* Each request for the appointment of a TAC shall be submitted in writing via courier to: Room 2705, 14th Street and Pennsylvania Ave., NW., Washington, DC 20230. * * *

* * * * *

PART 734—[AMENDED]

■ 6. The authority citation for 15 CFR part 734 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

■ 7. Supplement No. 1 to part 734 is amended by revising the last sentence in the second paragraph of the ''Answer'' to ''Question D(3)'' of Section D: Research, Correspondence, and Informal Scientific Exchanges, to read as follows:

Supplement No. 1 to Part 734—Questions and Answers—Technology and Software Subject to the EAR

* * * * *

Section D: Research, Correspondence, and Informal Scientific Exchanges

* * * * *

Question D(3): * * *

Answer: * * * Send written communications, via courier, to: Department of Commerce, Bureau of Industry and Security, Room 2705, 14th Street and Pennsylvania Ave., NW., Washington, DC 20230.

* * * * *

PART 740—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 9. Section 740.9(b)(1)(iv) is amended:

■ a. By revising the last two sentences as set forth below; and

■ b. By adding footnote 1, to read as follows:

§ 740.9 Temporary imports, exports, and reexports (TMP).

* * * * *

(b) * * *

(1) * * *

(i) * * *

(ii) * * *

(iii) * * *

(iv) * * * The commodity or software description, quantity, ultimate consignee, country of ultimate destination, and all other pertinent details of the shipment must be the same on a required Form B–13, as on Commerce Form 7513,[1] or when Form 7513 is not required, must be the same as on Customs Form 7512. When there is a material difference, a corrected Form B–13 authorizing the shipment is required.

■ 10. Section 740.12(a)(1) is amended:

■ a. By revising the last sentence as set forth below; and

■ b. By adding footnote 2 to read as follows:

§ 740.12 Gift parcels and humanitarian donations (GFT).

* * * * *

(a) * * *

(1) * * * However, payment by the donee of any handling charges or of any fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the donee for purposes of this definition of ''gift parcel.'' [2]

[1] The complete names of these forms are: Commerce Form 7513, ''Shipper's Export Declaration for Intransit Goods''; Customs Form 7512, ''Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit''.

[2] Many foreign countries permit the entry, duty-free, of gift parcels that conform to regulations regarding contents and marking. To secure this advantage, the sender should show the words ''U.S.A. Gift Parcel'' on the addressee side of the package and on any required customs declarations. Information regarding the foreign postal regulations is available at local post offices. Senders of gift parcels who wish information regarding import duties of a foreign country should contact the nearest Commercial Office, Consulate or Embassy of the country concerned.

§ 740.13 [Amended]

■ 11. Section 740.13(d)(1) is amended by redesignating footnote ''1'' as footnote ''3''.

§ 740.15 [Amended]

■ 12. Section 740.15(c)(1) is amended by redesignating footnote ''6'' as footnote ''4'', and § 740.15(c)(2) is amended by redesignating footnote ''7'' as footnote ''5''.

Supplement No. 1 to Part 740 [Amended]

■ 13. Supplement No. 1 to Part 740—Country Groups is amended by removing the rows labeled ''Algeria'', ''Andorra'', ''Comoros'', ''Djibouti'', ''Micronesia'', and ''Vanuatu'' in the table titled ''Country Group D''.

PART 743—[AMENDED]

■ 14. The authority citation for 15 CFR part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq*; Pub. L. 106–508; 50 U.S.C. 1701 *et seq*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 15. Section 743.1 is amended by revising paragraph (g)(1) to read as follows:

§ 743.1 Wassenaar Arrangement.

* * * * *

(g) * * *

(1) Two (2) copies of reports required under this section shall be delivered via courier to: Bureau of Industry and Security, U.S. Department of Commerce, Attn: ''Wassenaar Reports'', Room 2705, 14th Street and Pennsylvania Ave., NW., Washington, DC 20230. BIS will not accept reports sent C.O.D.

* * * * *

■ 16. Section 743.2 is amended by revising paragraph (d) to read as follows:

§ 743.2 High performance computers: Post shipment verification reporting.

* * * * *

(d) *Address.* A copy of the post-shipment report(s) required under paragraph (b) of this section shall be delivered, via courier, to: U.S. Department of Commerce, Office of Enforcement Analysis, HPC Team, 14th Street and Constitution Ave., NW., Room 4065, Washington, DC 20230. Note that BIS will not accept reports sent C.O.D.

PART 744—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

■ 18. Paragraph (1)(ii) of Supplement No. 2 to part 744 is amended:
■ a. By removing the term ''3.18 x 106m'' and adding ''3.18 x 10^6m'' in its place; and
■ b. By removing the term ''7.62 x 104m'' and adding ''7.62 x 10^4m'' in its place.
■ c. By redesignating paragraph (3)(iii) as paragraph (3)(ii);
■ d. By redesignating paragraph (3)(ii) as paragraph (3)(iii);
■ e. By removing the word ''that'' in newly designated paragraph (3)(iii) and adding the word ''than'' in its place;
■ f. By adding a quotation mark immediately after the word ''production'' in paragraph (5)(ii); and
■ g. By redesignating paragraph (5)(v) as paragraph (5)(iii).

PART 745—[AMENDED]

■ 19. The authority citation for 15 CFR part 745 is revised to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

PART 746—[AMENDED]

■ 20. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007–7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

§ 746.1 [Amended]

■ 21. Section 746.1 is amended by removing the words ''or Libya'' from the second sentence of paragraph (a)(1).

PART 748—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 23. Section 748.2 is amended by:
■ a. Revising the third location entry in paragraph (a) for the ''U.S. Export Assistance Center,''; and
■ b. Revising paragraph (c).
The revisions read as follows:

§ 748.2 Obtaining forms; mailing addresses.

(a) * * * U.S. Export Assistance Center, Bureau of Industry and Security, 160 W. Santa Clara Street, Suite 725, San Jose, CA 95113, Tel: (408) 998–8805 or (408) 998–8806, Fax: (408) 998–8677.
* * * * *

(c) To submit your application using an overnight courier, use the following address: Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Ave. NW., Room 2705, Washington, DC 20044, Attn: ''Application Enclosed''. BIS will not accept applications sent C.O.D.

■ 24. Section 748.7 is amended by revising the first sentence of paragraph (a)(1) to read as follows:

§ 748.7 Applying electronically for a license or classification request.

(a) * * * (1) *Requesting approval to submit applications electronically.* To submit applications electronically, your company must submit a written request to BIS. Written requests may be faxed to (202) 219–9179 or (202) 219–9182 (Washington, DC), faxed to (949) 660–9347 (Newport Beach, CA), or submitted to one of the addresses identified in § 748.2(c) of this part. * * *
* * * * *

■ 25. Section 748.10 is amended:
■ a. By revising the fourth and fifth sentences and adding a new sixth sentence to paragraph (a) as set forth below; and
■ b. By revising paragraph (b), to read as follows:

§ 748.10 Import Certificates and End-User Statements.

(a) *Scope.* * * * This section describes exceptions and relationships for both Import Certificates and End-User Statements, and generally applies only to transactions exceeding $50,000. In the case of countries identified in § 748.9(b)(2) of this part (excluding the People's Republic of China (PRC)), Import Certificates are required for national security controlled items in transactions exceeding $50,000. In the case of the PRC, End-User Statements are required for transactions exceeding $50,000 involving all items that require a license to the PRC for any reason. However, this $50,000 threshold is lower for certain exports to the PRC (see paragraph (b)(3) of this section).

(b) *Import Certificate or End-User Statement.* Unless your transaction meets one of the exemptions stated in § 748.9(a) of this part, an Import Certificate or End-User Statement must be obtained, if:

(1) Any commodities on your license application are controlled for national security (NS) reasons (except for items controlled under ECCNs 5A002 or 5B002), or any commodities to the PRC on your license application are controlled for any reason;

(2) The ultimate destination is a country listed in § 748.9(b)(2) of this part; and

(3) Your license application involves the export of commodities classified in a single entry on the CCL, and your ultimate consignee is in any destination listed in § 748.9(b)(2), and the total value of your transaction exceeds $50,000. Note that the $50,000 transaction threshold does not apply to certain exports to the PRC. If your transaction involves an export to the PRC of a computer that requires a license for any reason, an End-User Statement is required regardless of dollar value. Also, if your transaction involves an export to the PRC of an item classified under ECCN 6A003 that requires a license for any reason, an End-User Statement is required for transactions exceeding $5000.

(i) Your license application may list several separate CCL entries. If any individual entry including an item that is controlled for national security reasons exceeds $50,000, then an Import Certificate must be obtained covering all items controlled for national security reasons on your license application. If the total value of entries on a license application that require a license to the PRC for any reason listed on the CCL exceeds $50,000, then a PRC End-User Statement covering all such controlled items that require a license to the PRC on your license application must be obtained;

(ii) If your license application involves a lesser transaction that is part of a larger order for items controlled for national security reasons (or, for the PRC, for any reason) in a single ECCN exceeding $50,000, an Import Certificate, or a PRC End-User

Statement, as appropriate, must be obtained.

(iii) You may be specifically requested by BIS to obtain an Import Certificate for a transaction valued under $50,000. You also may be specifically requested by BIS to obtain an End-User Statement for a transaction valued under $50,000 or for a transaction that requires a license to the PRC for reasons in the EAR other than those listed in the CCL.

■ 26. Section 748.15 is amended:

■ a. By revising the last two sentences of paragraph (a)(1) as set forth below;

■ b. By removing the phrase ''Exporters and reexporters'' at the beginning of the first sentence of paragraph (f)(1)(i) introductory text and adding ''Reexporters'' in its place;

■ c. By removing the phrase ''exported or'' in paragraph (f)(1)(i)(A); and

■ d. By removing the phrase ''exported or'' in paragraph (f)(1)(i)(B).

§ 748.15 Authorization Validated End-User (VEU).

* * * * *

(a) * * *

(1) * * * Submit the request to: The Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Mark the package ''Request for Authorization Validated End-User.''

* * * * *

■ 27. Supplement No. 4 to part 748 is amended by revising the ''IC/DV authorities'' column entry for ''China, People's Republic of'' to read as follows:

Supplement No. 4 to Part 748—Authorities Administering Import Certificate/Delivery Verification (IC/DV) and End-User Statement Systems in Foreign Countries

Country	IC/DV authorities	System administered
*	*	*
China, People's Republic of	Ministry of Commerce; Department of Mechanic, Electronic and High Technology Industries; Export Control Division I; Chang An Jie No. 2; Beijing 100731 China; Phone: (86)(10) 6519 7366 or 6519 7390; Fax: (86)(10) 6519 7543; *http://cys.mofcom.gov.cn/ag/ag.html*.	PRC, End-User Statement

* * * * *

■ 28. Supplement No. 5 to part 748 is amended by revising paragraph (a)(2)(i) to read as follows:

Supplement No. 5 to Part 748—U.S. Import Certificate and Delivery Verification Procedure

* * * * *

(a) * * *

(2) * * *

(i) By courier to the Bureau of Industry and Security, Room 2705, 14th Street and Pennsylvania Ave., NW., Washington, DC 20230, Attn: Import Certificate Request; or

* * * * *

PART 750—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

§ 750.11 [Amended]

■ 30. Section 750.11(b)(1) is amended by removing the phrase ''§ value'' at both places where it appears and adding the term ''$ value'' in its places.

PART 752—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 32. Section 752.17 is revised to read as follows:

§ 752.17 BIS address.

You should use the following address when submitting to BIS applications, reports, documentation, or other requests required in this part 752, via courier: Bureau of Industry and Security, U.S. Department of Commerce, 14th and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230, ''Attn: Special Licensing and Compliance Division''. You may also reach the Special Licensing and Compliance Division by phone at (202) 482–0062 or by fax at (202) 501–6750.

PART 754—[AMENDED]

■ 33. The authority citation for 15 CFR part 754 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 30 U.S.C. 185(s), 185(u); 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 34. Section 754.2 is amended:

■ a. By revising paragraph (g)(1) as set forth below;

■ b. By removing the term ''License Exceptions TAPS'' in the first sentence of paragraph (j)(2) and adding ''License Exception TAPS'' in its place; and

■ c. By revising the second sentence of paragraph (j)(2) as set forth below:

§ 754.2 Crude oil.

* * * * *

(g) * * *

(1) Applicants must submit their applications, via courier, on Form BIS–748 to the following address: Office of Exporter Services, ATTN: Short Supply Program—Petroleum, Bureau of Industry and Security, U.S. Department of Commerce, 14th and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230.

* * * * *

(j) * * *

(2) * * * The SED or AES record shall be sent, via courier, to the following address: Director, Deemed Exports and Electronics Division, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, U.S. Department of Commerce, 14th and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230.

* * * * *

■ 35. Section 754.6 is amended by revising paragraph (c) to read as follows:

§ 754.6 Registration of U.S. agricultural commodities for exemption from short supply limitations on export.

* * * * *

(c) *Address.* Submit applications pursuant to the provisions of section 7(g) of the EAA, via courier, to: Bureau of Industry and Security, U.S.

Department of Commerce, 14th and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230.

■ 36. Section 754.7 is amended by revising paragraph (d) to read as follows:

§ 754.7 Petitions for the imposition of monitoring or controls on recyclable metallic materials; Public hearings.

* * * * *

(d) *Address.* Submit petitions pursuant to section 7(c) of the EAA, via courier, to: Bureau of Industry and Security, U.S. Department of Commerce, 14th and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230.

PART 774—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 38. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins'', Export Control Classification Number (ECCN) 1C350 is amended by revising the last sentence of paragraph 1.e. in the ''License Requirement Notes'' section to read as follows:

Supplement No. 1 to Part 744—The Commerce Control List

* * * * *

Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins''

* * * * *

1C350 Chemicals that may be used as precursors for toxic chemical agents.

* * * * *

License Requirement Notes

1. * * *
a. * * *
b. * * *
c. * * *
d. * * *
e. * * * The report must be sent, via courier, to the U.S. Department of Commerce, Bureau of Industry and Security, 14th and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230, Attn: ''Report of Sample Shipments of Chemical Precursors''.

■ 39. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B999 is amended by revising the ''Related Controls'' paragraph of the ''List of Items Controlled'' section to read as follows:

Supplement No. 1 to Part 744—The Commerce Control List

* * * * *

Category 2—Materials Processing

* * * * *

2B999 Specific processing equipment, n.e.s., as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See also 0B001, 0B002, 0B004, 1B233, 2A293, 2B001.f, 2B004, 2B009, 2B104, 2B109, 2B204, 2B209, 2B228, 2B229, 2B231, 2B350.

* * * * *

■ 40. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9E001 is amended by revising the Heading and ''License Requirements'' section to read as follows:

Supplement No. 1 to Part 744—The Commerce Control List

* * * * *

Category 9—Aerospace and Propulsion

* * * * *

9E001 ''Technology according to the General Technology Note for the ''development'' of equipment or ''software'' controlled by 9A001.b, 9A004 to 9A012, 9B (except 9B990 or 9B991), or 9D (except 9D990 or 9D991).

License Requirements

Reason for Control: NS, MT, AT

Control(s)	Country chart
NS applies to ''technology'' for items controlled by 9A001.b, 9A012, 9B001 to 9B010, 9D001 to 9D004 for NS reasons.	NS Column 1.

* * *

* * * * *

■ 41. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9E002 is amended by revising the Heading to read as follows:

Supplement No. 1 to Part 744—The Commerce Control List

* * * * *

Category 9—Aerospace and Propulsion

* * * * *

9E002 ''Technology'' according to the General Technology Note for the ''production'' of equipment controlled by 9A001.b, 9A004 to 9A011 or 9B (except 9B990 or 9B991).

* * * * *

Dated: December 21, 2007.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. E7–25423 Filed 12–31–07; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 38 and 284

[Docket Nos. RM96–1–028 and RM05–5–004; Order No. 698–A]

Standards for Business Practices for Interstate Natural Gas Pipelines; Standards for Business Practices for Public Utilities

Issued December 20, 2007.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Order on clarification and rehearing.

SUMMARY: This order denies requests for rehearing, and provides clarification of the final rule issued on July 16, 2007 that incorporated by reference standards dealing with coordination of scheduling between electric utilities and natural gas pipelines that were promulgated by the Wholesale Gas Quadrant (WGQ) and the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB), and provided policy guidance on issues relating to such coordination.

DATES: *Effective Date:* January 2, 2008.

FOR FURTHER INFORMATION CONTACT: Eric Winterbauer (Legal), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–8329.

Susan Pollonais (Technical), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–6011.

Kay Morice (Technical), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–6507.

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

1. On June 25, 2007, the Federal Energy Regulatory Commission (Commission) issued Order No. 698,[1] in which the Commission amended parts 38 and 284 of its open access regulations governing standards for business practices and electronic communications with public utilities and interstate natural gas pipelines. The Commission incorporated by reference certain standards promulgated by the North American Energy Standards Board (NAESB)[2] in order to improve coordination between the electric and gas industries. Specifically, the Commission sought to improve communications about scheduling of gas-fired generators.

2. In addition, the Commission provided policy guidance on issues raised by NAESB relating to scheduling coordination and to the possible development of additional standards by NAESB. First, the Commission discussed the use of gas indices for pricing capacity release transactions, stating that the Commission's regulations permit releasing shippers to use price indices or other formula rates on all pipelines, regardless of whether the pipeline has a provision allowing the use of indices as part of its discounting provisions, so long as the prices are less than the maximum rate in the pipeline's tariff.[3] Second, the Commission discussed, but did not modify, the shipper's ability to choose alternate delivery points, stating that the ability to shift a delivery point when a pipeline constraint occurs upstream would make it easier for shippers to redirect gas supplies to generators when capacity is scarce. Lastly, the Commission discussed possible changes to the gas intraday nomination schedule, clarifying that NAESB should actively consider whether changes to existing intra-day schedules would benefit all shippers.

I. Requests for Rehearing

3. The Interstate Natural Gas Association of America (INGAA) requests clarification, or in the alternative rehearing, on the date pipelines are required to implement changes with regard to the three issues on which the Commission provided guidance. INGAA notes that industry participants were required to implement the NAESB standards by November 1, 2007, and requests that the Commission clarify that it would be appropriate for NAESB to propose additional standards and then for the Commission to have another rulemaking proceeding before pipelines are required to implement changes.

4. Specifically, with regard to capacity release, INGAA notes that in the Final Rule the Commission acknowledges that NAESB may need to develop standards to ensure that the terms and conditions of a release and the means of implementing a formula rate are clearly set out.[4] INGAA contends that prior to Order No. 698, the Commission's regulations were never interpreted to allow unrestricted pricing in capacity release transactions. INGAA argues that while pipelines had the ability to file non-conforming agreements, there was never a policy in place for releasing shippers to file non-conforming capacity release agreements based on index-based rates. INGAA further contends that pipelines are not currently equipped to allow unrestricted pricing in capacity release transactions, and that requiring them to do so raises implementation issues concerning bid evaluation and awards, scheduling and billing.

5. INGAA further contends that unrestricted pricing in releases raises scheduling priority issues. It argues that index-based or other formula prices raise the issue of how such prices can be compared to a fixed, discounted rate for scheduling purposes. INGAA adds that the Commission should be aware that, depending on the rate formula utilized, there may be several methodologies that can be used to determine a rate for scheduling purposes and that one methodology may favor some shippers over others.

6. INGAA requests that the Commission clarify the procedures needed for pipeline billing of capacity release transactions that use index-based or formula rates. INGAA argues that pipelines should not be required to calculate the rates under such pricing mechanisms, nor should pipelines be placed in the position of arbitrating disputes between a releasing shipper and a replacement shipper about the rate to be charged under the formula used. INGAA requests that the Commission clarify that (1) in any release that does not utilize a fixed stated rate, the releasing shipper must inform the pipeline of the rate to be charged to the replacement shipper in time for the pipeline to bill such rate; and (2) the pipeline is entitled to rely on the rate provided by the releasing shipper such that the only recourse a replacement shipper has if it disagrees with such rate is against the releasing shipper. INGAA adds that pipelines should not be required to determine the rate to be charged under such releases or be placed in the middle of disputes between its shippers and their replacement shippers over such rates.[5]

7. INGAA also requests that the Commission clarify when pipelines are required to implement changes regarding intra-day scheduling, and that, rather, it is appropriate to wait for NAESB to consider any industry-wide standards.[6]

8. INGAA requests that the Commission clarify that Order No. 698 does not require pipelines to convey any non-public information. As an example, INGAA states that information concerning a pipeline's methods for dealing with hourly flow variances, the administration of operational balancing agreements, the operation of compressor units, and the operation of meter stations, all on a real-time or nearly real-time basis, may be implicated by or be part of, the required communications discussed in the Order No. 698. INGAA states that this information is not public information, which pipelines do not usually communicate.

9. The American Gas Association (AGA) filed an answer.

II. Discussion

A. Procedural Matters

10. We reject AGA's answer. Rule 713 of the Commission's Rules of Practice and Procedures does not allow answers to requests for rehearing.[7]

Indexed Releases

Relation to NAESB Standards Development

11. INGAA requests clarification or in the alternative rehearing, arguing that pipelines should not have to permit shippers to use gas price indices as part of released transactions until NAESB develops standards for using price indices and they are adopted by the Commission. The Commission denies the clarification and the alternative rehearing request.

12. As we explained in Order No. 698, our existing regulations already permit releasing shippers to use price indices

[1] *Standards for Business Practices for Interstate Natural Gas Pipelines; Standards for Business Practices for Public Utilities*, Order No. 698, 72 FR 38757 (July 16, 2007) FERC Statutes and Regulations ¶ 31,251 (June 25, 2007).

[2] The standards for the Wholesale Electric Quadrant are: Gas/Electric Coordination Standards WEQ–011–0.1 through WEQ–011–0.3 and WEQ–011–1.1 through WEQ–011–1.6. The standards for the Wholesale Gas Quadrant are: Additional Standards, Definitions 0.2.1 through 0.2.3 and Standards 0.3.11 through 0.3.15.

[3] Order No. 698, FERC Statutes and Regulations ¶ 31,251 at P 55.

[4] *Id.* at P 56.

[5] INGAA Request for Rehearing at 6.

[6] *Id.* at 7.

[7] 18 CFR 385.713(d) (2007).

or other formula rates on all pipelines, regardless of whether the pipeline has included a provision allowing the use of indices as part of its discounting provisions, so long as the prices are less than the maximum rate in the pipeline's tariff.[8] Section 284.8(b)[9] of the Commission's regulations states that ''firm shippers must be permitted to release their capacity, in whole or in part, on a permanent or short-term basis, without restrictions on the terms or conditions of the release,'' and section 284.8(e)[10] mandates that such a release may not be ''over the maximum rate.'' Releasing shippers are permitted under these regulations to set the appropriate price governing the release. In Order No. 698, we did not impose any additional regulatory requirements on the pipelines, and therefore we find no basis to delay implementation of our existing regulations.

13. INGAA maintains that the Commission's regulations were never previously interpreted to permit unrestricted pricing in capacity release transactions. INGAA cites no support for the proposition that the Commission did not interpret its regulations to permit pricing flexibility. In fact, in Order No. 636–A, the Commission explained that releasing shippers are not required to rely on default provisions in the pipeline's tariff, but can structure their own pricing terms:

> Due to the variety of releasing conditions that may exist, the Commission will not establish only one methodology for evaluating best bids, but will use the following approach. The pipeline's tariff must include an objective and non-discriminatory economic standard for determining best bids. Releasing shippers may rely upon this standard in structuring their capacity releases, but are not required to do so. If a releasing shipper does not specify a standard, the standard in the pipeline's tariff will apply. Releasing shippers may include in their offers to release capacity reasonable and non-discriminatory terms and conditions to accommodate individual release situations, including provisions for evaluating bids.[11]

The Commission also has explained that these regulatory provisions provide releasing shippers with the flexibility to price using gas price indices.[12]

14. Contrary to INGAA's implication, the Commission did not ask NAESB to develop standards for indexed releases because such releases were not previously permitted. In this proceeding, due to the interest by shippers in such releases, the Commission requested NAESB to consider developing standards to make these releases quicker and more efficient.[13] The existing WGQ NAESB standards recognize that non-standard pricing terms may be included in release transactions, but do not necessarily permit such releases to be accorded the same processing timeline as standard releases.[14] The Commission requested NAESB to consider standards that would create a standardized indexing methodology so that the use of indexed releases could become faster and could compete on a more equal footing with pipeline discounts and negotiated rate transactions.

15. INGAA suggests that permitting index pricing prior to the development of the NAESB standards may create difficulty in evaluating competing bids or completing the bid evaluation process in the time needed to implement the release. We do not find this to be a sufficient basis to delay shippers' ability to implement indexed releases to compete with the pipeline's use of such practices. The Commission required in Order No. 636 that the terms and conditions of all releases, including the methods for evaluating competing bids, must be objective, applicable to all shippers, and non-discriminatory.[15] The releasing shipper has the burden of ensuring that the bid evaluation method is clear enough for the pipeline to administer. Further, the standard capacity release timelines do not apply to bid evaluation methods that are out of the ordinary or difficult to apply. Releasing shippers that want indexed deals implemented expeditiously therefore have an incentive to ensure that their bid evaluation methodologies are relatively simple to apply.

16. INGAA also maintains that allowing unrestricted pricing discretion may cause problems for some pipelines that use price to prioritize the scheduling of secondary firm transportation.[16] However, the Commission does not require that pipelines employ such a method for scheduling firm transportation, and we find that a possible inconvenience to some pipelines does not justify prohibiting releasing shippers from choosing pricing methods permitted by the regulations. Those pipelines that may have such provisions would either need to apply their priced-based scheduling provisions to those capacity release transactions that use index pricing or file under section 4 of the Natural Gas Act to amend their tariffs to provide for such scheduling.[17]

1. Billing Under Index-Priced Releases

17. INGAA requests that we clarify that in any release that does not utilize a fixed stated rate, the releasing shipper must inform the pipeline of the rate to be charged to the replacement shipper in time for the pipeline to bill such rate; and the pipeline is entitled to rely on the rate provided by the releasing shipper such that the only recourse a replacement shipper has if it disagrees with such rate is against the releasing shipper.

18. We will not permit pipelines to delay acceptance of index price deals on this basis. Pipelines ought to be able to calculate prices under index releases, because, as the Commission required in Order No. 636, the terms and conditions of such releases must be objective and clearly stated. Many pipelines also currently bill shippers under their own negotiated rate and index price transactions, and, therefore, should be able to calculate the rates under released transactions in the same way. However, if after experience with index releases, a pipeline believes that the volume of such releases or other conditions warrants revisions in the method used to bill for index releases, the pipeline may file under section 4 of the Natural Gas Act to propose such revisions, and the Commission will consider those changes after evaluating the position of the pipeline's shippers.

[8] In a Notice of Proposed Rulemaking, the Commission has proposed to lift the price ceiling for short-term capacity releases. *Promotion of a More Efficient Capacity Release Market, Notice of Proposed Rulemaking*, 121 FERC ¶ 61,170 (2007).

[9] 18 CFR 284.8(b) (2007).

[10] 18 CFR 284.8(e) (2007).

[11] *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation*, Order No. 636–A, 57 FR 36128 (Aug.12, 1992), FERC Statutes and Regulations January 1991—June 1996 ¶ 30,950, at 30,557 (Aug. 3, 1992). *See El Paso Natural Gas Co.*, 61 FERC ¶ 61,333, at 62,289 (1992).

[12] *See Panhandle Eastern Pipe Line Co.*, 106 FERC ¶ 61,194, P 6 (2006);

[13] Order No. 698, FERC Statutes and Regulations ¶ 31,251 at P 56.

[14] Standards 5.3.1 and 5.3.3 (18 CFR 284.12(a)((1)(vi)) provide that as long as releasing shippers use defined, standard bid methodologies, the pipelines are required to adhere to the NAESB timelines in processing such bids. However, these standards recognize that the releasing shipper might elect other bid evaluation methodologies for which pipeline processing can take longer than the standard timelines.

[15] Order No. 636–A, FERC Statutes and Regulations January 1991–June 1996 ¶ 30,950, at 30,557.

[16] The Commission requires pipelines to permit shippers, including replacement shippers, the flexibility to temporarily schedule the receipt and delivery of gas at points other than those listed in their contracts if capacity is available.

[17] INGAA does not explain why the same procedures used to schedule pipeline index discount transactions and negotiated rate transactions, which employ a variety of pricing techniques, cannot be applied to capacity release transactions.

B. Intra-Day Scheduling

19. INGAA also requests that we clarify that any changes regarding intra-day scheduling need not be implemented by November 1, 2007, and that instead it is appropriate for NAESB to consider and propose any industry-wide standards. We agree with INGAA. Order No. 698 did not adopt changes in the intra-day nomination timeline, so the November 1, 2007 deadline does not apply to any such change. While the Commission did not require the pipelines to make any changes in nomination schedules, we did indicate that such standards could be very beneficial to the industry and that pipelines with gas-fired generators should, on their own, consider the addition of other intra-day nomination opportunities that would be of benefit to the shippers.[18] Pipelines are free to propose additional intra-day nomination opportunities prior to any proposal by NAESB if they so choose.

C. Non-Public Information

20. INGAA maintains that the Commission should clarify that Order No. 698 does not require pipelines to convey any non-public information as a result of the standards incorporated by reference in the Final Rule. In particular, INGAA points to information concerning a pipeline's methods for dealing with hourly flow variances, the administration of operational balancing agreements, the operation of compressor units, and the operation of meter stations.

21. INGAA does not point to which, if any, standards it believes would require the dissemination of this information, so we cannot provide a definitive answer. The standards themselves do not generally detail the type of information that should be provided. For example, it appears from the examples that INGAA may be referring to standard 0.3.12, which states that: ''The Power Plant Operator (PPO) and the Transportation Service Provider(s) (TSP) that is directly connected to the PPO's Facility(ies) should establish procedures to communicate material changes in circumstances that may impact hourly flow rates.'' This standard does not require the dissemination of detailed information about why the hourly flow rates are affected; it requires only that the pipeline establish communication procedures so that the power plant operator and the pipeline are made timely aware that such hourly flow changes may occur. Without a more detailed explanation of which other standards would require the disclosure of information that INGAA wishes to keep non-public, we cannot address this issue further. INGAA and the pipelines may bring any specific issue to the Commission's attention.

The Commission orders:

The requests for rehearing and clarification are resolved as discussed in the body of the order.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–25121 Filed 12–31–07; 8:45 am]

BILLING CODE 6717–01–P

[18] Order No. 698, FERC Stats. & Regs. [Regulations Preambles] ¶ 31,251 at P 69.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2007–0146]

RIN 1625–AA09

Drawbridge Operation Regulation; Milhomme Bayou, Stephensville, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation governing the operation of the Stephensville Bridge across Milhomme Bayou, mile 12.2, (Landside Route) at Stephensville, St. Martin Parish, Louisiana and canceling the test deviation concerning this bridge. Currently the bridge opens on signal, but due to the minimal waterway traffic, the bridge owner requested this change. The rule will require the draw of the bridge to open on signal if at least one hour of advance notice is given. During the advance notice period, the draw shall open on less than one hour notice for an emergency, and shall open on demand should a temporary surge in waterway traffic occur.

DATES: This rule is effective February 1, 2008. The test deviation published on October 5, 2007, 72 FR 56898 is cancelled as of February 1, 2008.

ADDRESSES: Comments and related materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket USCG–2007–0146. The docket is available at *http://www.regulations.gov* and will include any personal information you have provided.

FOR FURTHER INFORMATION CONTACT: Bart Marcules, Bridge Administration Branch, telephone (504) 671–2128. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 2, 2007, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Milhomme Bayou, Stephensville, LA'' in the **Federal Register** (72 FR 56025). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

St. Martin Parish requested that the operating regulation on the Stephensville Bridge be changed in order to operate the bridge more efficiently. The Stephensville Bridge located on Milhomme Bayou at mile 12.2 (Landside Route of the Morgan City Port Allen Alternate Route) in Stephensville, St. Martin Parish, Louisiana has a vertical clearance of 5.8 feet above mean high water, elevation 3.5 feet Mean Sea Level (MSL) in the closed position and unlimited clearance in the open position. The Stephensville Bridge opened on signal as required by 33 CFR 117.5; however, the waterway traffic is minimal and during the past twelve months an average of 5 boats per day have requested an opening. Most of the boats requesting openings are commercial vessels consisting of tugboats with barges and shrimp trawlers that routinely transit this waterway and are able to give advance notice.

Concurrent with the publication of the Notice of Proposed Rulemaking concerning this schedule of operation, a Test Deviation was published on October 5, 2007, entitled ''Drawbridge Operation Regulation; Milhomme Bayou, Stephensville, LA'' in the **Federal Register** (72 FR 56898). This test deviation was issued to allow St. Martin Parish to test the proposed schedule and to obtain data and public comments. This deviation is being canceled upon this final rule going into effect because there have been no comments or complaints, and the new operating schedule will be permanent upon cancellation. This deviation from the operating regulations was authorized under 33 CFR 117.35.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not

require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The current and historical waterway traffic is very minimal with an average of 5 signals to open a day and most signals come from commercial vessels able to schedule an opening. The bridge is also only requiring a one hour advance notice, and will open as soon as possible for emergencies. Also the bridge will open on demand should a temporary surge in waterway traffic occur, and this schedule was tested without any complaints.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect a limited number of small entities. These entities include operators of tugboats and trawlers using the waterway. This rule will have no impact on any small entities because they are able to give notice prior to transiting through this bridge and most vessel operators that require an opening are currently providing advance notice. Lastly, no comments or complaints were received concerning this new operating schedule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. The Coast Guard provided contact information, so that small entities could ask questions concerning this rule. No small entities contacted the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges.

List of Subjects in 33 CFR Part 117

Bridges.

Words of Issuance and Regulatory Text

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Section 117.481 is added to read as follows:

§ 117.481 Milhomme Bayou

The draw of the Stephensville Bridge, mile 12.2 (Landside Route) at Stephensville shall open on signal if at least one hour of advance notice is given. During the advance notice period, the draw shall open on less than one hour notice for an emergency, and shall open on demand should a temporary surge in waterway traffic occur.

Dated: December 21, 2007.

J.R. Whitehead,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. E7–25495 Filed 12–31–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2007–0093]

RIN 1625–AA87

Security Zone; Kahului Harbor, Maui, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: On November 28, 2007, the Coast Guard published a temporary interim rule that created a security zone in the waters of Kahului Bay and Kahului Harbor, Maui, and on designated adjacent areas of land. This temporary final rule modifies the activation period of the security zone from the previous interim rule to allow the public greater access to Kahului Harbor and Kahului Bay during the transit of the Hawaii Superferry. This temporary final rule is intended to enable the Coast Guard and its law enforcement partners to better protect people, vessels, and facilities in and around Kahului Bay and Kahului Harbor during the transit of the Hawaii Superferry. This rule complements, but does not replace or supersede, existing regulations that establish a moving 100-yard security zone around large passenger vessels like the Superferry.

DATES: This rule is effective from January 2, 2008. through January 31, 2008. The Coast Guard will accept comments on this rule through January 31, 2008.

ADDRESSES: You may submit comments and related material, identified by Coast Guard docket number USCG–2007–0093, by any of the four methods listed below. To avoid duplication, please use only one of the following methods:

(1) *Mail:* Lieutenant Sean Fahey, U.S. Coast Guard District 14 (dl), Room 9–130, PJKK Federal Building, 300 Ala Moana Blvd., Honolulu, Hawaii 96850.

(2) *Electronically:* E-mail to Lieutenant Sean Fahey at *Sean.C.Fahey@uscg.mil* using the subject line ''Comment—Maui Security Zone.''

(3) *Fax:* (808) 541–2101.

(4) *Online: http://www.regulations.gov.*

Documents indicated in this preamble as being available in the docket are part of docket USCG–2007–0093 and are available for inspection and copying at U.S. Coast Guard District 14 (dl), Room 9–130, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Sean Fahey, U.S. Coast Guard District 14 at (808) 541–2106.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this temporary rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. It would be contrary to the public interest to delay implementing this temporary rule, as any delay might result in damage or injury to the public, the Hawaii Superferry (HSF) and its passengers and crew, other vessels, facilities, and law enforcement personnel. Though operation of the HSF from Oahu to Maui was temporarily enjoined by the state circuit court in Maui, that injunction was lifted on November 14, 2007, following action by the Hawaii State legislature, and daily service to Maui resumed on December 13, 2007.

At the time we published the temporary interim rule for Kahului Bay and Kahului Harbor on November 28, 2007 (72 FR 67251), we cited assessments by the Maui Police Department that waterborne obstruction tactics similar to those used in Kauai in August 2007 were likely to be employed in Maui as our justification for implementing that rule without first publishing an NPRM, and for making the rule effective less than 30 days after publication in the **Federal Register**. In that rule, the security zone for Kahului Bay and Kahului Harbor is automatically activated for enforcement 60 minutes prior to the Superferry's arrival in the zone, and remains activated for enforcement until 10 minutes after its departure. Notice of the zone's activation is provided by broadcast notice to mariners and the display of flags at Gate 1 at the main entrance to the harbor, on Pier No. 2, and at the harbor entrance on Wharf Street.

The Coast Guard position from the start has been that we would only enforce a fixed security zone in and around Kahului Harbor if it was necessary to do so to ensure the safety and security of people, vessels and facilities. As of December 21, 2007, the HSF has been able to transit through Kahului Bay and Kahului Harbor without serious impediment, and the Coast Guard believes that it is appropriate to modify the previously published interim rule in light of these events to allow lawful users greater access to the land and waters areas of the security zone. This modification will allow the Coast Guard the discretion to activate the security zone only when such action is necessary to respond to actions by would-be obstructers, such as using themselves as human shields to obstruct the HSF's passage. This modification will be effected by changing the activation of the zone from an automatic event (one hour before the HSF arrives in, until ten minutes after the HSF departs from, Kahului Harbor) to a discretionary event—a determination by the Captain of the Port that activation of the zone is necessary to respond to the actions of HSF obstructers.

Though the Coast Guard has determined that the current security situation justifies a policy of only implementing the fixed security zone in and around Kahului Harbor when necessary to respond to acts or threatened acts that pose a hazard to the safety and security of people, vessels and facilities, the Coast Guard has also determined that it would be irresponsible to do away with a fixed security zone entirely. Just over a week of unopposed sailings into and out of Kahului by the HSF does not guarantee that would-be obstructers have entirely given up any thought of employing dangerous obstruction tactics in the harbor, when the HSF is most restricted in its ability to maneuver and thus at its most vulnerable. Indeed, waterborne protesters have illegally entered the waters of the security zone on several

occasions while the HSF was in Kahului Harbor, resulting in the need for enforcement action. Furthermore, activists from outside Maui, including admitted waterborne participants in the August 26 and 27 obstruction of the HSF in Nawiliwili Harbor, Kauai, have traveled to Maui, and have made statements in the press and otherwise in support of repeating the Kauai waterborne obstruction tactics on Maui. For these reasons, the Coast Guard believes it would be prudent, and in the best interests of safety, to retain a fixed security zone as a tool to be used when necessary to ensure the safe navigation of the HSF.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. Also, under 5 U.S.C. 553(d)(1) this rule may be made effective on January 2, 2008 because it relieves a restriction imposed by the current interim rule that the zone is activated automatically based on the arrival of the HSF.

Although the Coast Guard has good cause to issue this temporary rule without first publishing a proposed rule, you are invited to submit post-promulgation comments and related material regarding this rule through January 31, 2008. The Coast Guard received several comments on the interim rule, and this public input was useful in the creation of this temporary final rule. All comments will be reviewed as they are received. Your comments will assist us in drafting future rules should they be necessary, and may cause us to change this temporary final rule before it expires.

All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) for their Docket Management Facility to process online submissions to Coast Guard dockets. You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

Background and Purpose

The Hawaii Superferry (HSF) is a 349-foot large passenger vessel documented by the U.S. Coast Guard with an endorsement for coastwise trade, and certified for large passenger vessel service in the United States. The HSF, operating Hawaii's first inter-island vehicle-passenger service, is intended to provide service among the islands of Oahu, Maui, and Kauai. The sole port in Maui that can accommodate the HSF is Kahului Harbor. The sole port in Kauai that can accommodate the HSF is Nawiliwili Harbor.

The HSF inaugurated commercial service from Oahu to both Maui and Kauai on August 26, 2007. The voyage to and from Maui on that date occurred without incident. However, in Kauai, nearly 40 swimmers and obstructers on kayaks and surfboards blocked Nawiliwili Harbor's navigable channel entrance to prevent the lawful entry of the HSF into Kauai. Other demonstrators ashore threw rocks and bottles at Coast Guard personnel who were conveying detained obstructers to shore.

On the following day, August 27, 2007, the HSF again sailed to and from Maui without incident. Upon arrival in Kauai, however, approximately 70 persons entered the water again to physically block the channel entrance, thereby preventing the HSF from docking in Nawiliwili Harbor. Due to the difficulty in maneuvering in the small area of Nawiliwili Harbor, and in the interest of ensuring the safety of the protesters, the HSF's master chose not to enter the channel until the Coast Guard cleared the channel of obstructers. However, because the vessel remained outside the harbor, and because the obstructers did not approach within 100 yards of the vessel, the existing security zone for large passenger vessels (33 CFR 165.1410) did not provide the Coast Guard with the authority to control obstructer entry into Nawiliwili Harbor or clear the channel of obstructers before the HSF commenced its transit into the harbor. After waiting 3 hours, and with nearly 20 obstructers still in the water actively blocking the HSF, the HSF's master, after consulting with company officials, made the decision to return to Oahu without mooring in Kauai.

On August 28, HSF officials announced the ''indefinite'' suspension of commercial operations. Shortly after the company announced its suspension of operations, a Maui trial court judge in state court issued a temporary restraining order, which was followed by a preliminary injunction several weeks later, prohibiting HSF from utilizing the harbor improvements in Kahului Harbor, Maui. This injunction was the product of a Hawaii Supreme Court determination that the Hawaii Environmental Protection Act (HEPA) required the state to conduct an environmental assessment of the effects of the harbor improvements that were necessary to accommodate the HSF in Kahului Harbor. Following the Supreme Court decision, the trial court determined that HEPA required the environmental assessment to be conducted before the HSF could use those harbor improvements; and since that assessment had not occurred, the injunction was a necessary remedy. The injunction only pertained to Kahului Harbor; it did not apply in Nawiliwili Harbor, Kauai. However, the HSF voluntarily decided not to sail to Kauai while the court case was ongoing.

In response to this judicial action, the governor called the Hawaii legislature into special session to consider whether to grant legislative relief to HSF. The legislature passed a bill during this special session called Act 2, which the governor signed into law. Act 2 allowed the HSF to utilize the harbor improvements in Maui and Kauai while all necessary environmental assessments were being conducted. The trial judge in Maui determined that this legislation overcame the requirement in HEPA that caused him to enjoin HSF from utilizing of the harbor improvements in Maui, and in a ruling on November 14, 2007, he dissolved and vacated the injunction. This opened the door to HSF resuming commercial service to Maui.

Notwithstanding the fact that the HSF did not face waterborne obstructers in Kahului Harbor during its commercial voyages there in August, 2007, intelligence and assessments by the Maui Police Department indicated a substantial likelihood that certain elements in Maui, disaffected by the process that led to adoption of Act 2 and vacation of the injunction, might adopt the dangerous tactics used by the obstructers in Kauai in an effort to prevent the HSF from safely arriving in Maui upon its resumption of service to the island in December. Individuals and groups had organized rallies and started several internet forums to encourage and coordinate support for their efforts. The dangerous and unlawful intent of these individuals and groups was clear, as was their resolve.

In response, on November 28, 2007, the Coast Guard published a temporary interim rule in the **Federal Register** (72 FR 67251) creating a security zone in the waters of Kahului Bay and Kahului Harbor, Maui, and on certain land features associated with Kahului harbor, to ensure the safety and security of people, vessels and facilities during the transit of the Hawaii Superferry. Under the provisions of that rule, the security zone is automatically activated for enforcement 60 minutes prior to the Superferry's arrival in the zone and remains activated for enforcement until

10 minutes after its departure. Notice of the zone's activation is provided by broadcast notice to mariners and the display of flags at Gate 1 at the main entrance to the harbor, on Pier No. 2, and at the harbor entrance on Wharf Street.

Legitimate recreational users of Kahului Harbor have expressed concern about the security zone's potential impact on their recreational activities. This concern was reflected in several of the comments the Coast Guard received on the interim rule, in comments reported in the press, and in informal conversations between harbor users and Coast Guard representatives. In view of the fact that in the HSF's first full week of resumed operations in Maui there were no attempts to engage in waterborne obstructions of the HSF's passage, the Coast Guard has determined that there is no longer a need for the zone to automatically be activated every time the HSF approaches and enters Kahului Harbor. Thus, the Coast Guard is creating this temporary final rule that does away with automatic activation of the fixed security zone, and instead grants the Captain of the Port discretion to activate the zone only when he determines that acts or threatened acts pose a hazard to the safety and security of people, vessels and facilities. When the security zone is activated for enforcement, notice will be provided via a marine information broadcast, and via the display of flags at Gate 1 at the main entrance of the harbor, on Pier No. 2, and at the harbor entrance on Wharf Street. This rule does not in any way change the dimensions of the zone established in the temporary interim rule this rule is replacing, nor does it replace or supersede existing regulations that establish a moving 100-yard security zone around large passenger vessels like the Superferry.

This temporary security zone is in response to the threat posed by would-be obstructers in and around Kahului Harbor to HSF and its crew and passengers, law enforcement officers working to ensure HSF's safe transit, and the obstructers themselves. By designating significant portions of the waters of Kahului Harbor and Kahului Bay, and specified areas of land adjacent to the water, as a security zone, this temporary security zone rule provides the Coast Guard and its law enforcement partners the authority to prevent persons and vessels from entering or remaining in the water with the intent of using themselves as human barriers to impede the HSF's safe passage.

Discussion of Rule

This rule creates a temporary security zone in most of the waters of Kahului Harbor, Maui; in waters of Kahului Bay, Maui; and on designated areas of land adjacent to Kahului Harbor. This temporary final rule is effective from January 2, 2008, through January 31, 2008. When the security zone is activated for enforcement, notice will be given by marine information broadcast and by a red flag, illuminated between sunset and sunrise, posted at the following locations: At Gate 1 at the main entrance to the harbor; on Pier No. 2; and at the harbor entrance on Wharf Street. During its period of activation and enforcement, entry into the land and water areas of the security zone is prohibited without the permission of the Captain of the Port, Honolulu, or his or her designated representative.

In preparing this temporary rule, the Coast Guard made sure to consider the rights of lawful protestors. To that end, the Coast Guard excluded from the security zone a defined region which creates a sizeable area of water in which demonstrators may lawfully assemble and convey their message in a safe manner to their intended audience. This area of the harbor not included in the security zone is completely accessible to anyone who desires to enter the water, even when the security zone is activated, and is fully visible to observers ashore, at the HSF mooring facility, aboard the HSF when transiting the harbor, and from the air.

The Coast Guard also took into account the lawful users of Kahului Harbor and Kahului Bay in its creation of this temporary rule. As previously noted, the rule will only be activated when necessary. With the exception of the 33 CFR 165.1408 100-yard security zone noted above that surrounds all large passenger vessels, Kahului Harbor and Kahului Bay will be fully available to all users during the period when the security zone is not activated. Furthermore, the rule affords those desiring to use the harbor and surrounding waters and land areas with the opportunity to request, and a process for requesting, permission of the Captain of the Port to enter the zone while it is activated in a manner that will not endanger any vessel, waterfront facility, the port, or any person.

The security zone incorporates the minimum land and water areas necessary to ensure the purposes underlying the rule's creation are served. Waters outside of the harbor are included in the zone to ensure that the HSF is able to line up, unimpeded, on the range that guides it safely into Kahului Harbor. The breakwaters on either side of the harbor entrance are included in the zone to ensure that would-be obstructers do not have a ready staging point for attempting to block the very narrow entrance to Kahului Harbor. Pier No. 2, to which the HSF ties up, is included in the security zone, is entirely fenced off, and not legally accessible except to authorized personnel. Other than the designated protest area, the waters of Kahului Harbor, including areas of the harbor not navigable by the HSF, are included in the zone to prevent would-be obstructers from interfering with law enforcement vessels in the harbor that are working to ensure the HSF's safe passage.

Under 33 CFR 165.33, entry by persons or vessels into the security zone during a period of zone activation is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives.

Operation of any type of vessel, including every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, within the security zone while the zone is activated is prohibited. If a vessel is found to be operating within the security zone without permission of the Captain of the Port, Honolulu while the zone is activated, the vessel is subject to seizure and forfeiture.

All persons and vessels permitted in the security zone while the zone is activated must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel include commissioned, warrant, and petty officers of the Coast Guard and other persons permitted by law to enforce this regulation. Upon being hailed by an authorized vessel or law enforcement officer using siren, radio, flashing light, loudhailer, voice command, or other means, the operator of the vessel must proceed as directed.

If authorized passage through the security zone, a vessel must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. While underway with permission of the Captain of the Port or his or her designated representatives, under 33 CFR 165.1408, no person or vessel is allowed within 100 yards of the HSF when it is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representatives.

When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within the security zone during the enforcement period in order to ensure navigational safety. Any Coast Guard commissioned, warrant, or petty officer, and any other person permitted by law, may enforce the regulations in this section.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This expectation is based on the short activation and enforcement duration of the security zone created by this temporary rule, as well as the limited geographic area affected by the security zone.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. While we are aware that the affected area has small entities, including canoe and boating clubs and small commercial businesses that provide recreational services, we anticipate that there will be little or no impact to these small entities due to the narrowly tailored scope of this temporary rule, as well as the fact that such entities can request permission from the Captain of the Port to enter the security zone when it is activated.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding this rule so that they may better evaluate its effects on them and participate in the rulemaking process. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Sean Fahey, U.S. Coast Guard District 14, at (808) 541–2106. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children. While some obstructers, both on land and on shore, used small children in furtherance of their obstruction activities during the August 26 and 27 HSF arrivals into Kauai, and while online forums and other sources indicate that some organizers are actively recruiting adolescents and small children with the intent of putting them in harm's way should the HSF attempt to enter either Kauai or Maui, any heightened harm faced by children as a result of these tactics has no relation to the creation of this rule. Instead, those heightened risks are entirely the product of persons who recruit and employ adolescents and children to put themselves at risk of death or serious physical injury by attempting to physically obstruct the passage of a large passenger vessel in a small harbor.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their

regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards is inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, under figure 2–1, paragraph (34)(g) of the Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. An ''Environmental Analysis Checklist'' and ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Revise temporary § 165.T14–164 to read as follows:

§ 165.T14–164 Security Zone; Kahului Harbor, Maui, HI.

(a) *Location.* The following land areas, and water areas from the surface of the water to the ocean floor, are a security zone that is activated as described in paragraph (c) of this section, and enforced subject to the provisions of paragraph (d) of this section:

(1) All waters of Kahului Harbor, Maui, shoreward of the Kahului Harbor COLREGS DEMARCATION LINE (see 33 CFR 80.1460), except for a zone extending from the shoreline with the following three legs as boundaries:

(i) A leg extending in a straight line between Buoy ''10'' (LLNR 28375) and Buoy ''12'' (LLNR 28380);

(ii) A leg extending in a straight line between Buoy ''10'' (LLNR 28375) and the nearest shoreline point; and

(iii) A leg extending in a straight line between Buoy ''12'' (LLNR 28380) and the fence line at the southwestern base of Pier Two, at position (20 °53.589′N, 156 °28.084′W).

(2) Pier No. 2 in Kahului Harbor.

(3) The eastern breakwater at the entrance of Kahului Harbor, beginning at the east break wall (20 °53.958′N, 156 °28.161′W).

(4) The western breakwater at the entrance of Kahului Harbor, beginning at the berm on the west break wall (20 °53.925′N, 156 °28.611′W).

(5) All waters of Kahului Bay bounded on the south by the COLREGS. DEMARCATION LINE (see 33 CFR 80.1460); bounded on the north by line of latitude 20°56′ N; bounded on the west by a straight line drawn from the berm on the west break wall (20°53.925′ N, 156°28.611′ W) at a direction of 330° to the line of latitude 20°56′ N; and bounded on the east by a straight line drawn from the east break wall (20°53.958′ N, 156°28.161 W) at a direction of 030° and ending at the line of latitude 20°56′ N.

(b) *Effective period.* This section is effective from January 2, 2008, through January 31, 2008. It will be activated for enforcement as described in paragraph (c) of this section.

(c) *Zone activation.* The zone described in paragraph (a) of this section will be activated for enforcement when necessary, as determined by the Captain of the Port Honolulu, to prevent damage or injury to vessels, persons, and waterfront facilities, including the Hawaii Superferry, its passengers and crew. The zone, however, will be activated no sooner than 60 minutes before the Hawaii Superferry's anticipated arrival into the zone and will remain activated no more than 10 minutes after the Hawaii Superferry's departure from the zone. Notice of activation of the zone will be made by the issuance of a marine information broadcast, and by the hoisting of a red flag, illuminated between sunset and sunrise, posted at the following locations: at Gate 1 at the main entrance to the harbor; on Pier No. 2; and at the harbor entrance on Wharf Street.

(d) *Regulations.* (1) Under 33 CFR 165.33, entry by persons or vessels into the security zone created by this section and activated as described in paragraph (c) of this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives. Operation of any type of vessel, including every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, within the security zone is prohibited. If a vessel is found to be operating within the security zone without permission of the Captain of the Port, Honolulu, and refuses to leave, the vessel is subject to seizure and forfeiture.

(2) All persons and vessels permitted in the security zone while the zone is activated must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard and other persons permitted by law to enforce this regulation. Upon being hailed by an authorized vessel or law enforcement officer using siren, radio, flashing light, loudhailer, voice command, or other means, the operator of a vessel must proceed as directed.

(3) If authorized passage through the security zone while the zone is activated, a vessel must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. While underway with permission of the Captain of the Port or his or her designated representatives, no person or vessel is allowed within 100 yards of the Hawaii Superferry when it is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representatives.

(4) Persons desiring to transit the security zone in this section while the zone is activated may contact the Captain of the Port at telephone number (808) 927–0865 or on VHF channel 12 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representatives. When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within the security zone in order to ensure navigational safety.

(e) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce this temporary security zone.

Dated: December 21, 2007.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fourteenth Coast Guard District.

[FR Doc. E7–25496 Filed 12–31–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–1074, FRL–8504–8]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District and San Joaquin Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and San Joaquin Valley Air Pollution Control District (SJVAPCD) portions of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving local rules that address circumvention, reduction of animal matter, and volatile organic compound (VOC) emissions from gasoline bulk storage tanks, gasoline filling stations, petroleum refinery equipment, and petroleum solvent dry cleaning.

DATES: This rule is effective on March 3, 2008 without further notice, unless EPA receives adverse comments by February 1, 2008. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–1074, by one of the following methods:

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, EPA Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted, amended, or revised by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES FOR FULL APPROVAL

District	Rule No.	Rule title	Adopted, amended, or revised	Submitted
MBUAPCD	415	Circumventions	03/21/07 Revised	08/24/07
MBUAPCD	418	Transfer of Gasoline into Stationary Storage Containers	03/21/07 Revised	08/24/07
MBUAPCD	1002	Transfer of Gasoline into Vehicle Fuel Tanks	03/21/07 Revised	08/24/07
SJVUAPCD	4104	Reduction of Animal Matter	12/17/92 Amended	08/24/07
SJVUAPCD	4402	Crude Oil Production Sumps	12/17/92 Amended	08/24/07
SJVUAPCD	4404	Heavy Oil Test Station—Kern County	12/17/92 Adopted	08/24/07
SJVUAPCD	4453	Refinery Vacuum Producing Devices or Systems	12/17/92 Amended	08/24/07
SJVUAPCD	4454	Refinery Process Unit Turnaround	12/17/92 Amended	08/24/07
SJVUAPCD	4625	Wastewater Separators	12/17/92 Amended	08/24/07
SJVUAPCD	4641	Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations.	12/17/92 Amended	08/24/07
SJVUAPCD	4672	Petroleum Solvent Dry Cleaning Operations	12/17/92 Amended	08/24/07

On September 17, 2007, the submittal of August 24, 2007 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved a version of MBUAPCD Rules 415, 418, and 1002 into the SIP on March 7, 2003 (68 FR 10966), May 24, 2004 (69 FR 29451), and January 15, 2004 (69 FR 2300), respectively.

Some SIP versions of submitted SJVAPCD rules are old rules from the eight counties that now comprise SJVAPCD; other SIP versions are SJVAPCD rules that have been renumbered. These SIP-approved rules are described below.

Precursor SIP rules for submitted SJVAPCD Rule 4104:

- Fresno County Rule 414, Reduction of Animal Matter (approved on September 22, 1972, 37 FR 19812).
- Kern County Rule 415, Reduction of Animal Matter (approved on September 22, 1972, 37 FR 19812).
- Kings County Rule 415, Reduction of Animal Matter (approved on September 22, 1972, 37 FR 19812).
- Madera County Rule 421, Reduction of Animal Matter (approved on November 18, 1983, 48 FR 52450).
- Merced County Rule 414, Reduction of Animal Matter (approved on September 22, 1972, 37 FR 19812).
- San Joaquin County Rule 414, Reduction of Animal Matter (approved on August 22, 1977, 42 FR 42219).
- Stanislaus County Rule 414, Reduction of Animal Matter (approved on September 22, 1972, 37 FR 19812).
- Tulare County Rule 415, Reduction of Animal Matter (approved on September 22, 1972, 37 FR 19812).

Precursor SIP rule for submitted SJVAPCD Rule 4402:

- SJVAPCD Rule 465.2, Crude Oil Production Sumps (amended on September 19, 1991, approved on December 18, 1994, 59 FR 64132).

Precursor SIP rules for submitted SJVAPCD Rule 4453:

- Kern County Rule 414.2, Refinery Process Vacuum Producing Devices or Systems (approved on August 21, 1981, 46 FR 42459).
- Kings County Rule 414.2, Refinery Vacuum Producing Devices or Systems (approved on May 7, 1982, 47 FR 19696).
- San Joaquin County Rule 413.2, Refinery Vacuum Producing Devices (approved on May 7, 1982, 47 FR 19696).

Precursor SIP rules for submitted SJVAPCD Rule 4454:

- Kern County Rule 414.3, Refinery Process Unit Turnaround (approved on August 21, 1981, 46 FR 42459).
- Kings County Rule 414.3, Refinery Process Unit Turnaround (approved on May 7, 1982, 47 FR 19696).
- San Joaquin County Rule 413.3, Refinery Process Unit Turnaround (approved on May 7, 1982, 47 FR 19696).

Precursor SIP rule for submitted SJVAPCD Rule 4625:

- SJVAPCD Rule 463.4, Wastewater Separators (adopted on April 11, 1991, approved on May 13, 1993, 58 FR 28354).

Precursor SIP rule for submitted SJVAPCD Rule 4641:

- SJVAPCD Rule 463.1, Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations (amended on September 19, 1991, approved on June 24, 1992, 57 FR 28089).

Precursor SIP rule for submitted SJVAPCD Rule 4672:

- SJVAPCD Rule 467.2, Petroleum Solvent Dry Cleaning Operations (adopted on April 11, 1991, approved on April 24, 1992, 57 FR 15026).

There is no SIP rule for submitted SJVAPCD Rule 4404.

C. What is the purpose of the submitted rules and rule revisions?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to control these pollutants.

The purposes of revisions to MBUAPCD Rules 415, 418, and 1002 relative to the SIP are as follows:

- *415.3.2:* Two provisions are added to ensure that source tests are performed as scheduled and not discontinued to avoid documentation of periods of noncompliance.
- *418.3.6:* A requirement is added for International Code Council (ICC) certification of vapor recovery installation personnel and vapor recovery test personnel for Phase I equipment.
- *1002.1.3.4:* An exemption from Phase II vapor recovery is added for facilities that have 90% of their vehicle fleet equipped with onboard refueling vapor recovery (ORVR).
- *1002.3.8:* A requirement is added for ICC certification of vapor recovery installation personnel and vapor recovery test personnel for Phase II equipment.

The purposes of new SJVAPCD Rule 4404 and amended Rules 4104, 4402, 4453, 4454, 4625, 4641, and 4672 and their amendments are as follows:

- *4104:* The rule requires reducing air contaminants during the reduction of animal matter by setting a minimum exposure time of 0.3 seconds at 1200 degrees Fahrenheit. The format of the rule is improved.
- *4402:* The rule requires limiting VOC emissions from sumps by the use of emission control devices. The format of the rule is improved, and the definition of VOC is deleted.
- *4404:* The rule requires reducing uncontrolled VOC emissions from a heavy oil test station by 99%.
- *4453:* The rule requires reducing VOC emissions from refinery vacuum producing devices by covering hotwells and collecting vapors for recycle to refinery gas or incineration. The format of the rule is improved.
- *4454:* The rule requires reducing VOC emissions from a refinery process unit turnaround by collecting vapors for recycle to refinery gas, incineration, or flaring. The format of the rule is improved.
- *4625:* The rule requires reducing VOC emissions from wastewater separators by installing covers or by the use of a vapor recovery system with a control efficiency of at least 90%. The format of the rule is improved, and the definition of VOC is deleted.
- *4641:* The rule requires reducing VOC emissions by prohibiting the application and manufacturing of certain types of asphalt used for paving and maintenance operations. The format of the rule is improved, and the definition of VOC is deleted.
- *4672:* The rule requires reducing VOC emissions from petroleum solvent dry cleaning operations through implementation of various good operating practices and with the use of emission control equipment. The format of the rule is improved.

The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see section 182(a)(2)), and must not relax existing requirements (see sections 110(l) and 193). Gasoline dispensing sources in ozone nonattainment areas must have gasoline vapor recovery equipment (see section 182(a)(3)(A)). The MBUAPCD

regulates an ozone maintenance attainment area (see 40 CFR part 81) and must require the use vapor recovery equipment at gasoline dispensing facilities in order to retain its maintenance attainment status. The SJVAPCD regulates an ozone nonattainment area (see 40 CFR part 81) and must fulfill the requirements of RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987).
2. *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,* EPA (May 25, 1988). [The Bluebook].
3. *Guidance Document for Correcting Common VOC & Other Rule Deficiencies,* EPA Region 9 (August 21, 2001). [The Little Bluebook].
4. *Suggested Control Measure for the Control of Organic Compound Emissions from Sumps Used in Oil Production Operation,* California Air Resources Board (August 1988).
5. *Control of Refinery Vacuum Producing systems, Wastewater Separators, and Process Unit Turnarounds,* U.S. EPA (October 1977).
6. *Control of VOC from the Use of Cutback Asphalt,* U.S. EPA (December 1977).
7. *Control of VOC Emissions from Large Petroleum Dry Cleaners,* U.S. EPA (September 1982).

B. Do the rules meet the evaluation criteria?

There are no specific requirements for MBUAPCD Rule 415, but the revisions improve enforcement of other rules. The rule should be given full approval. We believe that MBUAPCD Rules 418 and 1002 comply with the vapor recovery requirements for gasoline dispensing facilities and should be given full approval.

We believe that SJVAPCD Rules 4104, 4402, 4404, 4453, 4454, 4625, 4641, and 4672 are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations, fulfill the requirements of RACT, and should be given full approval.

The TSD has more information on our evaluation.

C. EPA recommendation to further improve a rule

The TSD describes a recommended revision to SJVAPCD Rule 4404 that does not affect EPA's current action but is recommended for the next time the local agency modifies the rule.

D. Public comment and final action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by February 1, 2008, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on March 3, 2008. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

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

Under section 307(b)(1) of the 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 March 3, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 16, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(351)(i)(B)(*2*), (B)(*3*), and (C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(351) * * *

(i) * * *

(B) * * *

(*2*) Rules 415 and 418, adopted on September 1, 1974 and revised on February 21, 2007 and March 21, 2007, respectively.

(*3*) Rule 1002, adopted on February 22, 1989 and revised on March 21, 2007.

(C) San Joaquin Valley Air Pollution Control District.

(*1*) Rules 4104, 4404, 4453, and 4454, adopted on May 21, 1992 and amended on December 17, 1992.

(*2*) Rules 4402, 4625, 4641, and 4672, adopted on April 11, 1991 and amended on December 17, 1992.

[FR Doc. E7–25103 Filed 12–31–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0766; FRL–8345–4]

RIN 2070–AJ28

Pesticide Tolerance Crop Grouping Program; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA issued a final rule in the **Federal Register** of December 7, 2007 (72 FR 69150) (FRL–8343–1), concerning amendments and revisions to the pesticide tolerance crop grouping regulations. This document is being issued to correct an omission in one of the crop grouping tables and to remove unnecessary scientific names from another table.

DATES: This final rule is effective January 2, 2008.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0766. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Rame Cromwell, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-308-9068; fax number:703-305-5884; e-mail address: *cromwell.rame@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Does this Technical Amendment Do?

EPA issued a final rule in the **Federal Register** of December 7, 2007 (72 FR 69150) (FRL–8343–1), concerning amendments and revisions to the pesticide tolerance crop grouping regulations. This document is being issued to correct an omission in the crop grouping table in § 180.41(c)(15)(ii) for Gooseberry, and to remove unnecessary scientific names from the crop group 21 table in § 180.41(c)(22)(ii).

III. Why is this Technical Amendment Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical amendment final without prior proposal and opportunity for comment, because this technical amendment merely adds two subgroup numbers which were inadvertently left out to one table, and removes unnecessary scientific nomenclature from another table. This technical amendment does not change the impact of the December 7, 2007 document. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do Any of the Statutory and Executive Order Reviews Apply to this Action?

EPA included the necessary statutory and Executive Order reviews in the December 7, 2007 final rule.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Pesticides and pest.

Dated: December 13, 2007.

James Jones,

Acting Assistant Administrator for Prevention, Pesticides, and Toxic Substances.

■ Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a, and 371.

■ 2. Section 180.41 is amended by revising the entry for ''Gooseberry (*ribes* spp)'' in table 1 to paragraph (c)(15)(ii), and by revising the Crop Group 21 table in paragraph (c)(22)(ii) to read as follows:

§ 180.41 Crop group tables.

* * * * *

(c) * * *

(15) * * *

(ii) * * *

TABLE 1.—CROP GROUP 13-07: BERRY AND SMALL FRUIT CROP GROUP

Commodities	Related crop subgroups
* * * * * * *	
Gooseberry (*Ribes* spp.)	13-07B, 13-07D, 13-07E, 13-07F
* * * * * * *	

* * * * *

(22) * * *

(ii) * * *

CROP GROUP 21.—EDIBLE FUNGI GROUP—COMMODITIES

Blewitt (*Lepista nuda*)
Bunashimeji (*Hypsizygus marrmoreus*)
Chinese mushroom (*Volvariella volvacea*) (Bull.) Singer
Enoki (*Flammulina velutipes*) (Curt.) Singer
Hime-Matsutake (*Agaricus blazei*) Murill
Hirmeola (*Auricularia auricular*)
Maitake (*Grifola frondosa*)
Morel (*Morchella spp.*)
Nameko (*Pholiota nameko*)
Net Bearing (*Dictyophora*)
Oyster mushroom (*Pleurotus spp.*)
Pom Pom (*Hericium erinaceus*)
Reishi mushroom (*Ganoderma lucidum* (Leyss. Fr.) Karst.)
Rodman's agaricus (*Agaricus bitorquis*) (Quel.) Saccardo
Shiitake mushroom (*Lentinula edodes* (Berk.) Pegl.)
Shimeji (*Tricholoma conglobatum*)
Stropharia (*Stropharia spp.*)
Truffle (*Tuber spp.*)
White button mushroom (*Agaricus bisporous* (Lange) Imbach)
White Jelly Fungi (*Tremella fuciformis*)

[FR Doc. E7–25280 Filed 12–31–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0732; FRL–8342–6]

Trifloxystrobin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for the combined residues of trifloxystrobin, and its free form acid metabolite in or on asparagus; papaya; sapote, black; canistel; sapote, mamey; mango; sapodilla; star apple; vegetable, root, except sugar beet, subgroup 1B; radish, tops; fruit, citrus, group 10; citrus, oil; citrus, dried pulp; and strawberry. Interregional Research Project Number 4 (IR–4), and Bayer Crop Science requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective January 2, 2008. Objections and requests for hearings must be received on or before March 3, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0732. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0732 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before March 3, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2006–0732, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Registers** of September 13, 2006 (71 FR 54058) (FRL–8091–2), and August 22, 2007 (72 FR 47010) (FRL–8142–5), EPA issued notices pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PPs) 6E7088, 6F7123, 7F7171 by IR–4, 500 College Road East, Suite 201 W, Princeton, NJ 08540; and Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. These petitions requested that 40 CFR 180.555 be amended by establishing tolerances for combined residues of the fungicide trifloxystrobin, (Benzeneacetic acid, (*E,E*)-α-(methoxyimino)-2-[[[[1-[3-(trifluoromethyl) phenyl]ethylidene]amino]oxy]methyl]-, methyl ester) and the free form of its acid metabolite CGA-321113 ((*E,E*)-methoxyimino-[2-[1-(3-trifluoromethyl-phenyl)-ethylideneaminooxymethyl]-phenyl]acetic acid, in or on asparagus at 0.07 parts per million (ppm); papaya at 0.7 ppm; sapote, black at 0.7ppm; canistel at 0.7 ppm; sapote, mamey at 0.7 ppm; mango at 0.7 ppm; sapodilla at 0.7 ppm; star apple at 0.7 ppm; vegetable, root, except sugar beet, subgroup 1B at 0.1 ppm; and radish, tops at 10 ppm (6E7088); fruit, citrus, group 10 at 0.4 ppm; citrus, oil at 36 ppm; citrus, dried pulp at 1.0 ppm (6F7123); and strawberry at 1.1 ppm (6F7171). These notices referenced a summary of the petitions prepared by Bayer CropScience, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. One comment was received from a private citizen on the notice of filing concerning the tolerances for strawberry and citrus. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has increased the tolerances on fruit, citrus, group 10 from 0.4 to 0.6 ppm, and citrus, oil from 36 to 38 ppm. The reason for these changes is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for combined residues of trifloxystrobin on asparagus at 0.07

ppm; papaya at 0.7 ppm; sapote, black at 0.7 ppm; canistel at 0.7 ppm; sapote, mamey at 0.7 ppm; mango at 0.7 ppm; sapodilla at 0.7 ppm; star apple at 0.7 ppm; vegetable, root, except sugar beet, subgroup 1B at 0.1 ppm; and radish, tops at 10 ppm; fruit, citrus, group 10 at 0.6 ppm; citrus, oil at 38 ppm; citrus, dried pulp at 1.0 ppm; and strawberry at 1.1 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follow.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by trifloxystrobin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found in the *Trifloxystrobin: Human Health Risk Assessment for Section 3 Registration for the Proposed Uses on Grasses Grown for Seed* on pages 41 and 42 at *http://www.regulations.gov*. The referenced document is available in docket EPA–HQ–OPP–2007–0539.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day–26/p30948.htm*.

A summary of the toxicological endpoints for trifloxystrobin used for human risk assessment can be found at *http://www.regulations.gov* in the *Trifloxystrobin: Human Health Risk Assessment for Section 3 Uses on Asparagus; Vegetable, Root Except Sugar Beet, Subgroup 1B; Radish (Tops); and Papaya, Black Sapote, Canistel, Mamey Sapote, Mango, Sapodilla, and Star Apple, Citrus Fruits, Crop Group 10; Citrus, Oil; and Citrus, Dried Pulp, and Strawberry* on pages 16 and 17 for docket ID number EPA–HQ–OPP–2006–0732.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to trifloxystrobin, EPA considered exposure under the petitioned-for tolerances as well as all existing trifloxystrobin tolerances in 40 CFR 180.555. EPA assessed dietary exposures from trifloxystrobin in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance level residues and 100 percent crop treated (PCT) was performed for trifloxystrobin.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment, EPA used the food consumption data from the USDA 1994–1996, and 1998 CSFII. As to residue levels in food, EPA assumed tolerance level residues and 100 PCT was performed for trifloxystrobin. PCT and/or anticipated residues were not used.

iii. *Cancer*. Trifloxystrobin is classified as a ''not likely carcinogen''; therefore, quantification of human cancer risk is not required and a cancer dietary exposure assessment was not performed.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for trifloxystrobin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of trifloxystrobin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Trifloxystrobin is immobile in soil. It degrades and transforms rapidly in soil and aquatic environments. The primary degradate is CGA–321113. Estimated drinking water concentrations (EDWCs) were calculated for total trifloxystrobin residues (parent trifloxystrobin plus the major degradate CGA–321113) using the Agency's First Index Reservior Screening Tool (FIRST) model for surface water and the Screening Concentration in Ground Water (SCI-GROW) model for ground water. The interim method for drinking water estimates for pesticides used in rice paddies was also used to generate EDWCs. The use site with the highest application rate is turf, with a maximum label rate of 1.078 pounds active ingredient/acre/year (lb ai/A/yr) (three applications at 0.359 lb ai/A/yr). Drinking water estimates were also provided for rice paddies that may be treated with trifloxystrobin.

The Agency determined that the highest EDWC for both acute and chronic analysis should use 140 parts per billion (ppb) based on the model for the use on rice. Because this model does not account for degradation of the chemical or dilution with uncontaminated water outside of the rice paddy, the calculated EDWCs (140 ppb) are expected to exceed concentrations likely to be found in drinking water derived from surface water sources.

Based on the FIRST, and SCI-GROW models, the estimated environmental concentrations (EECs) of trifloxystrobin for acute and chronic exposures for surface water are estimated at 140 ppb. Acute and chronic exposure for ground water is estimated at 3.4 ppb.

Modeled estimates of drinking water concentrations were directly entered

into the dietary exposure model. For the acute and chronic dietary risk assessments, the water concentration values of 140 ppb (acute and chronic) were used to access the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Trifloxystrobin is currently registered for the following residential non-dietary sites: Compass™ is registered for residential use on turf grass and ornamentals disease control. However, this product may only be applied by a Certified Pest Control Operator (PCO). Therefore, an assessment for residential handlers was not performed.

There is potential for dermal (adults and children) and oral exposure (children only) during post-application activities. EPA assessed residential post-application exposure using the following assumptions:

i. Dermal exposure from pesticide residues on lawns;

ii. Incidental non-dietary ingestion of pesticide residues on lawns from hand-to-mouth transfer;

iii. Incidental non-dietary ingestion of residues from object-to-mouth activities (pesticide-treated turf grass); and

iv. Incidental non-dietary ingestion of soil from pesticide-treated residential areas.

Post-application exposures from various activities following lawn treatment are considered to be the most common and significant in residential settings. Exposure via incidental non-dietary ingestion involving other plant material may occur but is expected to result in much less exposure than the four exposure scenarios listed above.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to trifloxystrobin and any other substances and trifloxystrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that trifloxystrobin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional (''10X'') tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is no indication of increased susceptibility of rat or rabbits to trifloxystrobin. In the developmental and reproduction toxicity studies, effects in the fetuses/offspring were observed only at or above treatment levels which resulted in evidence of parental toxicity.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicity database for trifloxystrobin is complete except for an acute neurotoxicity study which is classified as unacceptable. The toxicity database contains developmental toxicity studies in two species (rats and rabbits) and a 2–generation reproduction study in rats which are adequate to assess prenatal and/or postnatal susceptibility to infants and children. Although the available, submitted acute neurotoxicity study was found to be unacceptable, based on a weight-of-the evidence review of the available data, the lack of this study does not impact the Agency's ability to make an FQPA safety factor decision. Since there was no evidence of neurotoxicity in this study at the limit dose nor in the other subchronic and chronic studies in the database, there is no uncertainty concerning neurotoxic effects and EPA has reliable data to show that removal of the FQPA safety factor is safe for children. Additionally, these data demonstrate that a developmental neurotoxicity study is not required for this pesticide.

ii. There is no residual concern for prenatal or postnatal toxicity or increased sensitivity in infants and children. In both the rat developmental study and the 2–generation reproduction studies there were no effects in fetal animals or offspring at the highest dose tested. Although developmental effects were seen in the rabbit developmental study, there was a clear NOAEL identified for these effects and that NOAEL was used in setting the aPAD. Moreover, adverse effects were seen in the adult animals in this study at a lower level.

iii. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. Conservative ground water and surface water modeling estimates were used. Similarly, conservative assumptions were used to assess post-application exposure to children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by trifloxystrobin.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to trifloxystrobin will occupy < 1% of the aPAD for females 13 to 49 years old.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to trifloxystrobin from food and water will utilize 52% of the cPAD for all infants less than 1 year old. Based on the use pattern, chronic residential exposure to residues of trifloxystrobin is not expected to underestimate risk to adults or children.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Trifloxystrobin is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for trifloxystrobin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate dermal MOEs of 1,200 and 670 for the U.S. population and all infants <1 year old, respectively, and an oral MOE of 150 for all infants <1 year old.

4. *Intermediate-term risk*. Intermediate-term exposure (1 to 6 months) to the parent trifloxystrobin is not expected to occur in residential settings due to its short half-life (about 2 days based on soil and aquatic metabolism studies). Therefore, an intermediate-term aggregate risk assessment was not performed.

5. *Aggregate cancer risk for U.S. population*. EPA has classified trifloxystrobin as a ''not likely human carcinogen,'' and EPA considers trifloxystrobin to pose no greater than a negligible cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to trifloxystrobin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate gas chromatography with nitrogen phosphorus detector (GC/NPD) method (Method AG–659A) is available for enforcing tolerances for the combined residues of trifloxystrobin and CGA–321113 in plant commodities.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no Canadian maximum residue levels (MRLs) for trifloxystrobin. Codex and Mexican MRLs have been established for trifloxystrobin in or on various commodities; however, there are no Mexican MRLs for the commodities associated with the proposed uses. Codex MRLs have been established on carrots (0.1 ppm) and strawberry (0.2 ppm), which differs from the MRL calculated by the MRL spreadsheet for strawberry (1.1 ppm). Also, the residue definition for both Codex and Mexican MRLs includes only parent compound in plant commodities, but the definition for Codex MRLs in livestock commodities includes parent and the acid metabolite, CGA321113. Harmonization in plant commodities is not possible at this time as the current U.S. tolerance definition includes the combined residues of trifloxystrobin and its free acid metabolite.

C. Response to Comments

One comment was received from a private citizen who opposed the authorization to sell any pesticide that leaves a residue on food. The Agency has received this same comment from this commenter on numerous previous occasions and rejects it for the reasons previously stated in the **Federal Register** of 70 FR 1349, 1354 (January 7, 2005).

D. Explanation of Tolerance Revisions

Bayer CropScience requested a reduction in the pre-harvest interval from 30 to 7 days for citrus and a corresponding modification of the tolerance. The submitted field trial data and processing studies are adequate to support this request. As a result, tolerance expressions have been revised from 0.4 to 0.6 ppm for fruit, citrus, group 10; and 36 to 38 ppm for citrus, oil.

V. Conclusion

Therefore, the tolerances are established for combined residues of trifloxystrobin, Benzeneacetic acid, (*E,E*)-α-(methoxyimino)-2-[[[[1-[3-(trifluoromethyl)p phenyl]ethylidene] amino]oxy]methyl]-, methyl ester, and the free form of its acid metabolite CGA–321113 (*E,E*)-methoxyimino-[2-[1-(3-trifluoromethyl-phenyl)-ethylidene aminooxymethyl]-phenyl]acetic acid, in or on asparagus at 0.07 ppm; papaya at 0.7 ppm; sapote, black at 0.7 ppm; canistel at 0.7 ppm; sapote, mamey at 0.7 ppm; mango at 0.7 ppm; sapodilla at 0.7 ppm; star apple at 0.7 ppm; vegetable, root, except sugar beet, subgroup 1B at 0.1 ppm; and radish, tops at 10 ppm; fruit, citrus, group 10 at 0.6 ppm; citrus, oil at 38 ppm; citrus, dried pulp at 1.0 ppm; and strawberry at 1.1 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section

12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 20, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.555, the table to paragraph (a) is amended by revising the entries for ''Citrus, dried pulp'' ''Citrus, oil'' and ''Fruit, citrus, group 10,'' and by alphabetically adding new commodities to read as follows:

§ 180.555 Trifloxystrobin.

(a) * * *

Commodity	Parts per million
* * *	* *
Asparagus	0.07
* * *	* *
Canistel	0.7
* * *	* *
Citrus, dried pulp	1.0
Citrus, oil	38
* * *	* *
Fruit, citrus, group 10	0.6
* * *	* *
Mango	0.7
* * *	* *
Papaya	0.7
* * *	* *
Radish, tops	10
* * *	* *
Sapodilla	0.7
Sapote, black	0.7
Sapote, mamey	0.7
* * *	* *
Star apple	0.7
Strawberry	1.1
* * *	* *
Vegetable, root, except sugar beet, subgroup 1B	0.1
* * *	* *

* * * * *

[FR Doc. E7–25396 Filed 12–31–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[EPA–HQ–RCRA–2002–0002: FRL–8511–5]

RIN 2050–AE78

Regulation of Oil-Bearing Hazardous Secondary Materials From the Petroleum Refining Industry Processed in a Gasification System To Produce Synthesis Gas

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is revising its hazardous waste management regulations under the Resource Conservation and Recovery Act (RCRA) to further promote the environmentally sound recycling of oil-bearing hazardous secondary materials generated by the petroleum refining industry. Specifically, EPA is amending an existing exclusion from the definition of solid waste for oil-bearing hazardous secondary materials when they are processed in a gasification system at a petroleum refinery for the production of synthesis gas. We are finalizing this exclusion so that the gasification of these materials will have the same regulatory status (they are all excluded from the definition of solid waste under RCRA) as oil-bearing hazardous secondary materials that are reinserted into the petroleum refining process. This action serves what we believe is a national interest by capturing as much energy from a barrel of oil as possible to maximize production efficiencies at petroleum refineries in an energy constrained world.

DATES: This final rule is effective on February 1, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2002–0002. All documents in the docket are listed on the *http://www.regulations.gov* web site. Although listed in the index, some information is not publicly available, because, for example, it may be Confidential Business Information (CBI) or other information, the disclosure of which is restricted by statute. Certain material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. This Docket Facility 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 RCRA docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: Elaine Eby, Waste Minimization Branch, Hazardous Waste Minimization and Management Division, Office of Solid Waste (5302P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (703) 308–8449, *fax number:* (703) 308–8433, *e-mail address: eby.elaine@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Does This Action Apply to Me?

This rule may apply to entities regulated under RCRA, in the petroleum refining industry, identified as Standard Industrial Classification (SIC) 2911. To determine whether your facility, company, or business is affected by this action, you should carefully examine 40 CFR Parts 260 through 271. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding ''**FOR FURTHER INFORMATION CONTACT**'' section.

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J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations.
K. Congressional Review Act.

I. Statutory Authority

The U.S. Environmental Protection Agency (EPA or the Agency) regulates the generation and management of hazardous waste under 40 CFR Parts 260 through 273 using the authority of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6901 *et seq.*

II. Summary of This Action

EPA is amending an existing exclusion from the definition of solid waste that applies to oil-bearing hazardous secondary materials generated at a petroleum refinery when these materials are recycled by inserting them back into the petroleum refining process. This exclusion is found at 40 CFR 261.4(a)(12)(i) and applies to oil-bearing hazardous secondary materials that are hazardous because they are listed in 40 CFR Part 261, Subpart D (*e.g.*, K048–K052, K169–K170, and F037–F038), or because they exhibit a hazardous characteristic under Part 261, Subpart C.

With today's final rule, the exclusion will be revised to add ''gasification'' to the list of already recognized petroleum refinery processes (*e.g.*, distillation, catalytic cracking, fractionation, and thermal cracking units) into which oil-bearing hazardous secondary materials can be legitimately recycled. The Agency is also promulgating a definition for the term ''gasification,'' at 40 CFR 260.10, which applies only to this specific exclusion. The exclusion is conditioned on there being no land placement and no speculative accumulation of the oil-bearing hazardous secondary material prior to re-insertion into the petroleum refining process. The exclusion allows these materials to be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision.

Provided the conditions of the exclusion are met, oil-bearing hazardous secondary materials will be excluded from the definition of solid waste at the point of generation. Similarly, the fuels and by-products manufactured from these excluded materials will also be excluded.[1] Residuals from the gasification process, like residuals generated from other recognized petroleum refining processes (*e.g.*, fines from coking operations) will be classified as newly generated waste and would only be considered hazardous if they exhibit one or more of the hazardous waste characteristics. However, as discussed in the preamble for the **Federal Register** notice promulgating this exclusion at 63 FR 42128 (August 6, 1998), the exclusion extends only to materials actually reinserted into the petroleum refinery process, and any residuals generated from the processing of oil-bearing hazardous secondary materials prior to insertion into the petroleum refining process are designated as F037 waste.

Subsequent to the promulgation of the exclusion in August 1998 (63 FR 42110), we proposed regulatory language that would create a new, separate exclusion to address the gasification of oil-bearing hazardous secondary materials. (See 67 FR 13684, March 25, 2002.) However, in the course of finalizing this rule, we have concluded that a new exclusion is unnecessary. Instead, we are following the original proposal suggested in the July 15, 1998 Notice of Data Availability (NODA) (See 63 FR 38139) to add to 40 CFR 261.4(a)(12)(i) gasification, as one of the recognized petroleum refining processes to which oil-bearing hazardous secondary materials can be inserted and not be considered a solid waste under the Subtitle C hazardous waste regulations. The definition of gasification, however, is generally based on the March 2002 proposal, and comments and information developed as a result of both the NODA and that proposal.

Today's final rule is based on information presented in the July 1998 NODA, the final rule for oil-bearing hazardous secondary materials for petroleum refining operations published in August 1998, and the March 25, 2002 proposed rule. The rulemaking record for this rule incorporates the rulemaking records for all of these notices.

III. Background

The exclusion at 40 CFR 261.4(a)(12)(i) provides operators of petroleum refineries with the ability to recycle materials generated by the refining of crude oil to manufacture additional fuels. In that rule, we specifically address certain reinsertion scenarios that involved common practices within the industry (*e.g.*, coking and quench coking operations). Prior to finalizing these provisions, however, we issued a Notice of Data Availability (NODA) specifically requesting comment on extending the exclusion to gasification—a process that also provides operators of petroleum refineries the ability to extract additional hydrocarbons from these materials by converting them into a synthesis gas. (See 63 FR 38139, July 15, 1998.)

We stated in the NODA that gasification of oil-bearing hazardous secondary materials from the petroleum refining industry may be an activity warranting an exclusion from the definition of solid waste, because gasification also provides a means of recovering hydrocarbons from these materials and could be viewed as an additional process in crude oil refining. We also noted that a gasification system might compete with other petroleum refining operations (*i.e.*, coking) for these same materials, which suggested to us that gasification is an alternative fuel production process—just one that was not being used extensively in the petroleum refining industry.

The Agency did not add gasification in the 1998 rule, choosing to explicitly include only those petroleum refining processes discussed in the original proposal. In 2002 however, the Agency proposed a different, more ambitious exclusion for hazardous waste processed in a gasification system for the production of synthesis gas. In that

[1] The existing exclusion found at 40 CFR 261.4(a)(12)(i) also requires that the oil-bearing hazardous secondary material inserted into the petroleum refinery process does not result in the coke product exhibiting one or more of the hazardous waste characteristics.

proposal, we solicited comment on two conditional exclusions. The first was for oil-bearing hazardous secondary materials recycled in a gasification system operating at a petroleum refinery or at a different facility operating outside the petroleum refining industry. This proposal was different from what was proposed in the 1998 NODA, where gasification operations were specifically identified as part of the petroleum refining operation. A second, much broader exclusion, addressed all hazardous secondary material when processed in a gasification system for the production of synthesis gas. This broader exclusion is not being addressed as part of this rulemaking and is still under consideration by the Agency.[2]

Because the proposed exclusion was addressing recycling scenarios for oil-bearing hazardous secondary materials outside petroleum refining operations, we proposed an expanded set of conditions. The conditions proposed included the conditions already included in 40 CFR 261.4(a)(12)(i) (*e.g.*, no speculative accumulation and no land placement of the material prior to reuse), as well as conditions, that we believed, would ensure the legitimacy of the process as a production operation, rather than a waste treatment process.

The first condition specified was a definition of the types of gasification systems capable of processing these oil-bearing hazardous secondary materials into synthesis gas. At the time, we were aware of a number of devices operating in the United States (U.S.) that could claim to be a type of gasification system, but did not gasify materials in the same manner, or to the same extent, as the gasification systems we considered for the proposal. We were concerned that these devices may be more similar to waste treatment processes than to production operations.

Additionally, we proposed that the synthesis gas product from the gasification system meet the fuel specification promulgated for hazardous waste derived synthesis gas in the ''Synthesis Gas Rule.''[3] The synthesis gas specification (or syngas spec) establishes specific physical parameters and concentration levels for contaminants and serves as a regulatory benchmark for classifying synthesis gas produced from hazardous waste as a fuel that can be readily marketed, rather than as a hazardous waste fuel (see 40 CFR 261.38(b)).[4]

Finally, we proposed that any co-product or residue generated by the gasification system be subject to the Universal Treatment Standards (UTS) (found at 40 CFR 268.48) for six RCRA metals (*i.e.*, antimony, arsenic, chromium, lead, nickel, and vanadium), if such co-product or residue was placed on the land. This condition was proposed to ensure legitimacy by applying the same land disposal provisions to any co-product and residual that would have existed had the oil-bearing hazardous secondary materials not been excluded from the definition of solid waste. We reasoned that this would eliminate any incentive to claim to be performing ''gasification'' for the real purpose of avoiding treatment of metals in residues that ultimately are placed on the land.

In response to the proposal, a number of commenters generally supported the idea of promoting the reuse of oil-bearing hazardous secondary materials from petroleum refineries to produce additional fuels, although they also expressed concern with one or more of the proposed conditions. A number of other commenters, however, disagreed with our approach. Specifically, these commenters believed that full RCRA Subtitle C regulation for both the oil-bearing hazardous secondary materials and the gasification process was mandated by RCRA. These commenters stated that RCRA Subtitle C oversight is necessary because gasification is merely a poor combustion process, promoting the generation and release of toxic products of incomplete combustion (PIC), including dioxin-containing compounds. Conversely, other commenters questioned, as they had for the coking and quench coking operations in the original exclusion, whether we had any regulatory authority at all in this situation. (See discussion at 63 FR 42121–42129, August 6, 1998.) These commenters suggested that the gasification of oil-bearing hazardous secondary materials generated elsewhere in the refining process is merely the final step in extracting fuels from the crude oil feed to the refinery and is, therefore, part of an ongoing production process. We also received comments on the specific conditions we proposed as part of the exclusion.

With regard to the specific technical issues for which we solicited comment, we received little response. That is, commenters did not provide data on the composition of gasification system residues or the composition of synthesis gas. In addition, limited data were received regarding the economics of operating a gasification system at a petroleum refinery or elsewhere.[5] While we solicited this information for both the proposed petroleum refinery exclusion and the broader exclusion applicable to all hazardous waste (see 67 FR at 13695, March 25, 2002), the lack of information submitted weighed heavily on our decision to limit today's rulemaking specifically to the petroleum refinery industry.

Major comments on today's rule are discussed elsewhere in this preamble.

IV. Development of This Final Rule

Through study of existing technical reports and papers published by the Department of Energy (DOE) and others, the Agency was aware that gasification could be a part of the petroleum refining process. We solicited data to confirm this in our proposal; however, commenters did not provide a significant amount of new information, thus requiring EPA to once again check existing information and data to confirm our understanding of the gasification process and its use in petroleum refinery operations. In addition, we sought to confirm, through site visits, how gasification was integrated into the production process at some petroleum refineries.

[2] However, it is likely that if we chose to move forward with the broader exclusion, the Agency would issue a supplemental proposal before it makes any final decision.

[3] For purposes of this preamble discussion, we are using the term, ''Synthesis Gas Rule'' to refer to the regulation found at 40 CFR 261.38(b). This regulation was developed as part of the RCRA Comparable Fuels Exclusion that provides a conditional exclusion from RCRA Subtitle C for fuels which are produced from a hazardous waste, but which are comparable to some currently used fossil fuels. The entire preamble and rule can be found in 63 FR 33782, June 19, 1998. Hazardous Waste Combustors; Revised Standard; Final Rule—Part I: RCRA Comparable Fuel Exclusion; Permit Modification for Hazardous Waste Combustion Units; Notification of Intent to Comply; Waste Minimization and Pollution Prevention Criteria for Compliance Extensions.

[4] We also solicited comment on a number of approaches to revise the synthesis gas specifications found at 40 CFR 261.38(b). (See 67 FR at 13694, March 25, 2002.) In particular we were interested in revised standards for the highly volatile metals and some organic constituents.

[5] One commenter described the composition of their residue streams for their specific gasification system; however, no constituent concentration data was provided. In this case, the commenter described inorganic residues that vitrify into a leach resistant glass, solid particulates of baghouse dust and a dissolved salt scrubber solution.

A few comments were received on the economics of the gasification process. Several commenters disagreed with our assessment of the economics of running a gasification system. One commenter disagreed with our statements that the cost of building and operating a gasification system is sufficient to guarantee high quality products. Other commenters stated that the changes we were proposing would not lower the regulatory barriers to using gasification as part of the production process.

A. How Many Gasification Systems Are Currently Operating at Petroleum Refineries?

Petroleum refineries use gasification for the conversion of low-value fuels and/or secondary material, such as petroleum coke, visbreaker tar and deasphalter pitch into synthesis gas. Synthesis gas can then be converted to usable products, such as hydrogen, ammonia and other chemicals, and/or used as a fuel to produce steam and electricity. Oil-bearing hazardous secondary materials generated at the petroleum refinery can also be co-gasified with these other materials to manufacture synthesis gas. In petroleum refining operations, electric power generation is a preferred use for the synthesis gas. For this purpose, the integrated gasification combined cycle (IGCC) technology can be integrated into the petroleum refinery process. Except for the gasifier and the feedstock preparation units, many of the components in an IGCC system already exist at a petroleum refinery. Downstream of a gasifier, petroleum refineries, as part of their ongoing production processes, typically have the other components of an IGCC plant, including gas clean-up systems, Claus plants, heat recovery systems, and steam and gas turbines. Power generation for use within a petroleum refinery is not a new activity and based on our research, is widely practiced. Seldom, however, is enough power produced to allow it to be sold for external consumption. With the utilization of an IGCC plant, a refinery's internal power needs can be readily addressed with surplus power sold as a commodity to outside consumers.

Presently, EPA has identified four gasification systems operating at petroleum refineries in the U.S.[6]; one of these is an IGCC unit. [7,8,9] The second uses the synthesis gas to produce chemicals. The Agency is also aware of two petroleum refineries that operate units combining fluid coking with coke gasification, a process known as flexicoking.™[10]

While petroleum refinery-based gasification units are currently in limited use in the U.S., interest in developing these systems is on the rise.[11,12,13] Many factors may be contributing to this interest, but we believe it is most likely related to the increasing cost of natural gas, an increasing interest in maximizing efficiencies in the petroleum refining process, manufacturing cleaner fuels, and reducing the generation of waste. Although limited in number, petroleum refinery-based gasification systems have demonstrated positive economic returns, while providing more flexible operations to address increases in raw material costs.[14] These facilities have shown that gasification systems can process lower value fuels or material commodities (*e.g.*, petroleum coke and other petroleum secondary materials) into higher value fuels or chemical commodities. These systems have also demonstrated how well gasification fits into petroleum refinery operations and the advantages of doing so.

B. What Conclusions Have We Drawn About Gasification Systems Operating at Petroleum Refineries?

This Unit IV.B. explains the overall rationale for the Agency's decision that oil-bearing hazardous secondary materials inserted into a gasifier are excluded from the definition of solid waste. Analyses supporting this decision are found elsewhere in this preamble and in the rulemaking record, including the Response to Comment document for this rulemaking. In each configuration reviewed, where petroleum refineries used petroleum coke alone or in combination with other petroleum feedstock (including oil-bearing hazardous secondary materials), we found that the systems are operated as part of the petroleum refining process and produce synthesis gas as a legitimate product to further enhance the petroleum refining operation. We believe that a gasification system, when operated at a petroleum refinery, will function as a component of the overall petroleum refinery process to produce synthesis gas as its main product.[15] In turn, synthesis gas can be used to manufacture usable products, such as hydrogen, ammonia and other chemicals, and/or used as a fuel to produce steam and electricity. Oil-bearing hazardous secondary materials generated by petroleum refineries, as well as other low-value fuels, are appropriate feed materials to

[6] Data pertaining to operational gasification systems processing secondary materials from petroleum refineries was developed from a review of the Gasification Technology Council's database. Based on information obtained from this database, there are 16 gasification systems operating at petroleum refineries outside the U.S. See email correspondence from Mr. James Childress, Executive Director, Gasification Technology Council to Ms. Elaine Eby, USEPA. Re: Operational Gasification Systems Processing Petroleum Refining Residues at Petroleum Refineries. July 2007.

[7] *Experience With Low Value Feed Gasification at the El Dorado, Kansas Refinery* by Gary DelGrego. Texaco Power and Gasification. Presented at the 1999 Gasification Technology Conference. Recently, the Agency learned that the IGCC unit operating at the El Dorado, Kansas refinery was shut down in 2006.

[8] IGCCs combine the gasification reactor with a combined cycle power turbine designed to use the synthesis gas. In IGCC systems, the synthesis gas is injected into the combustion turbine and ignited. The resulting high energy exhaust from the combustion of synthesis gas in the turbine is used to turn a generator. Steam and additional electric power is recovered in a follow-up heat recovery steam generator from the turbine's high temperature exhaust.

[9] One of the largest markets for IGCC systems is the petroleum refining industry using petroleum residual feedstock, such as vacuum residual oil, deasphalter bottoms and petroleum coke. Petroleum refineries typically feature multi-train designs for high reliability and the co-production of power, steam and hydrogen for the refinery, with extra power being sold to third parties. *Major Environmental Aspects of Gasification-based Power Generation Technologies—Final Report.* U.S. Department of Energy. Office of Fossil Energy. National Energy Technology Laboratory. December 2002.

[10] Sapre, Ajit, Kamienski, Paul, Phillips, Glenn, Wright, Marie, *Resid Upgrading Technology Options and Role of Flexicoking Technology.* ERTC Coking and Gasification Conference, Paris France. April 18, 2007.

[11] Gray, D. and Tomlinson. *Potential of Gasification in the U.S. Refining Industry.* United States Department of Energy, National Energy Technology Laboratory. June 2000.

[12] Murano, John J. *Refinery Technology Profiles. Gasification and Supporting Technologies.* U.S. Department of Energy. National Energy Technology Laboratory. Energy Information Administration. June 2003.

[13] Clayton, Stewart J., Steigel, Gary J., and Wimer, John G., Gasification Technologies Product Team, U.S. Department of Energy. *U.S. DOE's Perspective on Long-Term Market Trends and R&D Needs in Gasification.* Presented at the 5th European Gasification Conference. Gasification—The Clean Choice. Noordwijk, The Netherlands. April 8–10, 2002.

[14] The addition of a gasification plant at an El Dorado, Kansas petroleum refinery resulted in significant economic benefits. Previously, the refinery was spending $12 to $14 million per year on power purchases from the local utility. With the implementation of the gasification system, the refinery reported paying only a few million dollars a year for stand-by services. In addition, the refinery saved about $1 million annually in both waste shipment and disposal costs and nitrogen costs. Steam production costs were reduced by more than half. Other benefits resulted from oxygen enrichment of the sulfur plant that enabled the refinery to process a wider range of high sulfur crudes. Furimsky, E. *Gasification in Petroleum Refinery of 21st Century.* Oil and Gas Science and Technology—Rev. IFP, Vol.54 (1999), No. 5, pp. 597–618.

[15] ''Gasification-based systems operated at a petroleum refinery are typically highly integrated processes. The complex consists of a number of distinct processing steps/plants. These are: feed preparation, gasifier, air separation unit (ASU), syngas clean-up, sulfur recovery unit (SRU), and downstream process options, such as cogeneration, hydrogen production, Fischer-Tropsch synthesis or methanol synthesis. Any given installation may or may not contain all of these processes depending on the feedstock used, products desired, and the availability of spare capacity in pre-existing plants at the petroleum refinery. For example, if the petroleum refinery has spare sulfur plant capacity or can revamp its existing sulfur plant to gain capacity, the sulfur plant would be considered outside the battery limits of the gasification complex.'' Marano, John J., *Refinery Technology Profiles: Gasification and Supporting Technologies.* U.S. Department of Energy. National Energy Technology Laboratory. Energy Information Administration. June 2003.)

gasification systems because these materials contain hydrocarbons that can be further processed into fuels or chemicals. The use of a gasifier to recover these hydrocarbons is ideal because the system not only operates to recover the hydrocarbon value for the production of a legitimate product, but can also process the non-fuel components to yield inorganic co-products (*e.g.*, liquid or solid sulfur, ammonia). In manufacturing settings, gasification systems have historically been used to produce commodities and have not been operated to get rid of unwanted material.[16] At petroleum refineries, a gasification system complements the activities already being performed at the petroleum refinery, *i.e.*, the manufacture of fuels from crude oil.

While some commenters have argued that gasification of oil-bearing hazardous secondary materials is more a waste management process involving incineration than a petroleum refining process, we refer to the conclusions drawn in a DOE report contrasting incineration and gasification. DOE concluded, and we agree, that gasification and incineration are distinct processes that can be distinguished by a number of factors. As discussed in the report, the factors distinguishing the two processes are: (1) Incinerators are designed to maximize the conversion of feedstock to carbon dioxide and water; gasifiers are designed to maximize the conversion of feedstock to carbon monoxide and hydrogen; (2) incinerators utilize large quantities of excess air; gasifiers utilize small quantities of oxygen; (3) incinerators operate in a highly oxidizing environment; gasifiers operate in a reducing environment; (4) incinerators discharge their flue gas to the environment as a waste; gasifiers utilize their synthesis gas for ongoing chemical, fuel production or power production as a product gas.[17]

The Agency has concluded that gasification operations fall within the scope of normal operations at petroleum refineries—even when applied to material that has historically been managed as waste. The Agency believes that recognizing gasification as a petroleum refining process, capable of recycling oil-bearing hazardous secondary materials, achieves the resource recovery goals of RCRA without jeopardizing human health and the environment. Gasification is a desirable component of fuel manufacturing operations at a petroleum refinery because it ensures more efficient processing of crude oil and provides the petroleum refinery with the added flexibility to maximize its fuel production outputs. Therefore, we disagree with the view that the activity serves essentially as a waste management process.

In today's final rule, we find that oil-bearing hazardous secondary materials generated as part of the petroleum refinery process and inserted into a gasification system located at a petroleum refinery, will serve as legitimate feedstock materials and that the gasification process, is a type of petroleum refining process warranting these materials an exclusion from the definition of solid waste. We have concluded that the operation of gasification systems at petroleum refineries is consistent with other processes that occur at petroleum refineries (*e.g.*, fractionation, coking, quench coking) because: (1) The activity takes place at a petroleum refinery; (2) the system uses feedstock only from refinery operations; (3) the system generates a synthesis gas that, is converted to multiple products, such as steam, electricity, hydrogen, as well as other chemicals; (4) the products generated are consistent with the many types of products normally generated at petroleum refineries; and (5) the system processes the raw material by manipulating the same variables, *e.g.*, hydrocarbons, as other refining processes that are universally accepted to be part of a petroleum refinery.[18]

V. This Final Rule

Gasification systems, like other petroleum refining operations, are capable of recovering fuel value or chemicals from the recycling of oil-bearing hazardous secondary materials. As such, we believe it is appropriate to treat these materials in a manner consistent with the other processes used at petroleum refineries that recover fuel value or chemicals from crude oil—the basic raw material used in petroleum refining. Today, we are amending the exclusion found at 40 CFR 261.4(a)(12)(i), by adding gasification to the list of recognized petroleum refining processes. We are finalizing this change to: (1) Prevent unnecessary confusion regarding the status of oil-bearing hazardous secondary materials from the petroleum industry recycled in a gasification system; (2) promote the use of a technologically advanced method of extracting hydrocarbons from these materials; and (3) remove regulatory restrictions that may limit the petroleum refining industry's ability to maximize the production of fuels and other commodities from crude oil, while minimizing the production of waste from the fuel production process.

The Agency has decided to limit the scope of this exclusion to oil-bearing hazardous secondary materials that are gasified as part of the petroleum refining process for the production of synthesis gas. As such, we are retaining only the conditions applied to oil-bearing hazardous secondary materials in the existing exclusion at 40 CFR 261.4(a)(12)(i). We are, however, adding one additional condition, a definition for gasification, which is based on information presented in the 1998 NODA, as well as the March 2002 proposal and comments and information received in response to these notices.

We have decided not to finalize the other conditions proposed in 2002. In large part, we have decided to eliminate these conditions because we are not extending this exclusion to oil-bearing hazardous secondary materials recycled at gasification systems operating outside the petroleum refining industry. The condition requiring the synthesis gas meet the specification we developed in the regulations at 40 CFR 261.38(b) has been removed because we now believe, based on the compelling arguments made by commenters and a review of our rationale for including it as a condition, that it was unnecessary and an inappropriate application of RCRA to a petroleum fuel product. Our decision is strongly influenced by the operational purpose of petroleum refineries—the production of fuels. Petroleum refineries create fuels for commercial markets, and we are convinced that these gasification systems operate within the reasonable scope of these operations. We have also removed the condition requiring that materials generated by the gasification system (*i.e.*, co-products and residuals) not be placed on the land if they exceed the nonwastewater Universal Treatment Standards (UTS) for antimony, arsenic, chromium, lead, nickel, and vanadium (found at 40 CFR 268.48). After further review, the Agency has determined that this condition is inconsistent with the current exclusion we are amending, and conflicts with how RCRA manages residues from excluded materials (*i.e.*,

[16] See review of Coal Conversion Technologies in *Perry's Chemical Engineer's Handbook,* Seventh Edition. Pages 27–13 through 27–25. McGraw-Hill. 1997.

[17] *A Comparison of Gasification and Incineration of Hazardous Waste—Final Report.* United States Department of Energy, National Energy Technology Laboratory (NETL). 3610 Collins Ferry Road. Morgantown, West Virginia 26505. DCN 99.803931.02. March 30, 2000.

[18] *Energy and Environmental Profile of the U.S. Petroleum Refining Industry.* United States Department of Energy. December 1998.

wastes are excluded at the point of generation, provided the conditions of the exclusion are met). Further, these constituents are not expected to leach at levels above the UTS in the residuals from gasification at petroleum refineries. These changes are discussed below.

A. Does the Conditional Exclusion Include a Definition for a Gasification System Used at a Petroleum Refinery?

Yes. In today's final rule, we are promulgating a regulatory definition for gasification systems that are used at petroleum refineries. For this rule, gasification is defined as a process, conducted in any enclosed device or system, designed and operated to process petroleum feedstock, including oil-bearing hazardous secondary materials, through a series of highly controlled steps utilizing thermal decomposition, limited oxidation, and gas cleaning to yield a synthesis gas composed primarily of hydrogen and carbon monoxide gas.

This final definition differs from the definition proposed in 2002 in a number of ways. We have: (1) Deleted the reference to incinerators or industrial furnaces; (2) removed the requirement for the gasifier to slag its inorganic feed at temperatures above 2000 degrees Fahrenheit; and (3) removed the requirement that the unit be equipped with monitoring devices that ensure the quality of the synthesis gas. This revised definition reflects current information on gasification systems at petroleum refineries and addresses the significant concerns commenters raised regarding the proposed definition. More importantly, however, the definition reflects the primary purpose for using gasification at petroleum refineries, the production of synthesis gas. As such, we believe that we have retained the most important requirements of a gasification system operating at a petroleum refinery: (1) That it is considered a process; and (2) it utilizes petroleum feedstock to yield a synthesis gas.

In the 2002 proposal (see 67 FR at 13690), we defined a gasification system as an enclosed thermal device and associated gas cleaning system (or systems) that does not meet the definition of an incinerator or industrial furnace (found at 40 CFR 260.10), and that: (1) Limits oxygen concentrations in the enclosed thermal device to prevent the full oxidization of thermally disassociated gaseous compounds; (2) utilizes a gas cleanup system or systems designed to remove contaminants from the partially oxidized gas that do not contribute to its fuel value; (3) slags inorganic feed materials at temperatures above 2000 degrees Fahrenheit; (4) produces a synthesis gas; and (5) is equipped with monitoring devices that ensure the quality of the synthesis gas produced by the gasification system.

We received numerous comments criticizing various aspects of our proposed definition. Some commenters argued the definition, as written, prohibited the potential use of a large number of gasification system designs that are in use around the world. More specifically, commenters stated that the definition eliminated one of the gasification designs currently processing petroleum residues in the U.S. because it did not operate at the specified temperature or slag the residual.[19] Generally, however, commenters urged the Agency to revise the definition to include all petroleum refinery-based units currently processing petroleum refining residues, or provide some type of site-specific variance to allow such units the opportunity to demonstrate that they can safely process refinery residues in their gasification system. While the development of a variance procedure would be a possible mechanism to evaluate those gasifiers not meeting the definition, the Agency believes that the definition of gasification being promulgated today addresses the concerns raised by the commenters and provides sufficient flexibility to allow for any number of gasification designs or configurations to be used within a petroleum refinery. As such, we have not included a variance provision as part of today's rule.

As previously mentioned, EPA has conducted a number of site visits to gasifiers located both on-site of a petroleum refinery and off-site and has continued to research the use of gasification at petroleum refineries. As a result of these efforts, we have concluded that gasification design and operation can vary substantially within the petroleum refining industry. We have also concluded and agree with commenters that a variety of different gasifier designs are capable of legitimately processing petroleum feedstock to produce a synthesis gas.[20] This has given us reason to reassess the need for specifically defining certain operating characteristics of a gasification system. Our revised definition of ''gasification'' allows additional flexibility in the design and configuration of gasification systems to process petroleum feedstock, including oil-bearing hazardous secondary materials, provided the gasification system produces a synthesis gas.

Several commenters questioned whether our definition should differentiate gasification from incinerators and industrial furnaces regulated under Subtitle C of RCRA. One commenter was particularly concerned that the proposed definition would require an affirmative determination by regulators that the gasification system did not meet the definition of incinerator or industrial furnace defined at 40 CFR 260.10. Additionally, the commenter questioned whether gasification systems also designed to recover hydrogen chloride (HCl) (which gasification systems can be configured to recover), could also be defined as a type of industrial furnace, (*i.e.*, halogen acid furnace) and thus not be able to use the exclusion.

After weighing the value added to the definition by including the references to industrial furnaces and incinerators (defined at 40 CFR 260.10), we are persuaded that including the reference to hazardous waste burning incinerators and industrial furnaces in the definition is unnecessary and could lead to confusion between the public, the regulated community, and regulators on how to regulate these units. Accordingly, we have removed the references to incinerators and industrial furnaces from the final definition. We expect, however, that even with this change to the definition, that certain gasification systems could be confused with, or identified as, a type of industrial furnace. In these situations, where the design and operational characteristics appear to be shared between the two types of systems, we believe it is appropriate for regulators to review the predominant products and process design of the system in question. For example, if the system recovers only small amounts of synthesis gas fuel, but significant amounts of hydrogen chloride, and the design of the system does not differ substantially from industrial furnaces designed to recover hydrogen chloride (*i.e.*, a substantial fraction of emissions are released to the atmosphere), such a system would more appropriately be classified as a type of industrial furnace, rather than a gasification system.

The Agency received few comments on four of the operational requirements

[19] The Agency would also note that this gasification system operates outside a petroleum refinery and as such, would not be eligible for today's final rule.

[20] The reader is referred to the following DOE reports assessing the various types of gasification systems that can be used at petroleum refineries. Marano, John J., *Refinery Technology Profiles: Gasification and Supporting Technologies.* U.S. Department of Energy. National Energy Technology Laboratory. Energy Information Administration. June 2003.) and Gray, D. and Tomlinson. *Potential of Gasification in the U.S. Refining Industry.* United States Department of Energy, National Energy Technology Laboratory. June 2000.

proposed as part of the definition of gasification system: (1) Limits on oxygen concentrations in the enclosed thermal device to prevent the full oxidization of thermally disassociated gaseous compounds (2) production of a synthesis gas; (3) requirements for a gas cleanup system or systems designed to remove contaminants from the partially oxidized gas that do not contribute to its fuel value; and (4) requirements for monitoring devices that ensure the quality of the synthesis gas produced by the gasification system. In general, commenters did not have specific technical issues with the provisions, but thought that the provisions were unclear and would benefit from additional clarification. For example, commenters stated that the requirement relating to monitoring devices would benefit from EPA identifying the type of monitoring equipment required. In the case of the requirement for monitoring devices, consideration of this condition is no longer germane based on our determination that petroleum gasification is a part of the petroleum refining operation. In today's rule, we have retained, with slight modifications, three of the operational requirements. Changes have been made to the definition to eliminate redundancy and provide a more clear and concise regulatory definition. The revised definition retains the key operational requirements of a gasification system operating at petroleum refinery—thermal decomposition, limited oxidation, gas cleanup, and production of a synthesis gas. This ensures that the exclusion applies only to gasification systems designed and operated in a manner that promotes the conversion of hydrocarbons found in the oil-bearing hazardous secondary materials into a synthesis gas fuel.

The operational requirement that received the most comment was for a gasification system to ''slag inorganic feed materials at temperatures above 2000 degrees Fahrenheit.'' Commenters were divided on the need for such a requirement. Some believed that the slagging criteria generally would result in a non-leachable residue, a ''preferred residual matrix.'' Others stated that the temperature requirement was arbitrary and not technically supportable. Additional commenters questioned the usefulness of the term slagging and the Agency's rationale for deciding to prohibit non-slagging gasifiers from the exclusion. These commenters pointed to the fact that the residues would be under RCRA Subtitle C jurisdiction if they exhibited a hazardous waste characteristic based on the content and leachability of the toxic metals.

We had proposed this requirement to address two issues: (1) To ensure that gasification systems processing excluded materials operate at a temperature sufficient to slag inorganic components found in the materials, so metals would not leach from the residue; and (2) to reduce the occurrence of unreacted carbon-containing compounds in the residue formed by the gasification system. After review of all the comments, and a re-examination of our site visit reports and available technical reports, we have determined that this requirement is not needed and would inappropriately restrict those gasification systems and configurations that could be effectively used at petroleum refineries for the production of synthesis gas fuels. We have found that classifying a gasifier as slagging or non-slagging has no relationship to a gasification system's overall ability to effectively process hydrocarbons for the production of synthesis gas fuel. Similarly, if a gasifier generates a residual that exhibits one or more of the hazardous waste characteristics, it will be subject to the RCRA Subtitle C hazardous waste regulations. We believe that this should provide adequate incentive for petroleum refineries to consider the potential benefit of slagging gasifiers verses non-slagging units.[21] Any further requirement by EPA would only interfere with the refineries' ability to most effectively achieve the same environmental endpoint.

In the proposed rule, we further stated that gasifiers generally do not have direct emissions to the atmosphere. Several commenters disagreed with this conclusion and suggested that potential releases of toxic and hazardous air pollutants (HAP) can occur during other steps in the gasification process. These steps include, feedstock preparation, gas cleanup, product recovery, and slag quenching, as well as during start-up, shutdown or operational emergencies of the gasification system. These commenters further stated that the current Clean Air Act (CAA) regulations may fail to properly address potential risk to human health and the environment posed by these releases. As a result, these commenters urged EPA to make a regulatory determination that gasifiers should be identified as an industrial furnace and subject to all RCRA/CAA hazardous waste combustion regulations.

In the proposal, (See 67 FR at 13688), we recognized that gasification systems are designed with release vents or flares that operate during emergencies or malfunctioning operations. Flares and release vents are necessary to prevent damage or catastrophic failure of the gasification system in the event of a major malfunction. These types of relief systems are common at facilities that manufacture products using thermal processes. Furthermore, the operation of flares and release vents is regulated by each facility's Title V CAA permit. Our decision to exclude, from the definition of solid waste, oil-bearing hazardous secondary materials generated at a petroleum refinery and inserted back into the petroleum refining process has been guided by a determination that gasification is a legitimate petroleum refining process that results in the manufacture of a synthesis gas product. (See discussion in Section IV of this preamble.) This decision allows the beneficial use of petroleum refining oil-bearing hazardous secondary materials for the manufacturing of a synthesis gas fuel that can be used for the production of steam, and/or power. Therefore, we do not agree with the commenter's suggestion that gasification systems operating at petroleum refineries processing these materials are waste management units (e.g., incinerators) and that any potential air emissions should be subject to all RCRA/CAA hazardous waste combustion regulations. Emissions at a petroleum refinery operating a gasification system will be evaluated. However, these emissions will be evaluated for compliance with regulations for petroleum refining operations under the authority of the CAA.[22]

B. Does the Conditional Exclusion Include a Synthesis Gas Specification?

No. In today's final rule, there is no condition requiring the synthesis gas to meet certain physical and/or constituent specifications. In the 2002 proposal, the Agency included a condition that required the synthesis gas to meet the specification for hazardous waste derived synthesis gas found at 40 CFR 261.38(b). We proposed to apply the synthesis gas specification because we believed it would ensure that the synthesis gas produced was a legitimate fuel product, and was an appropriate

[21] Although EPA did not rely on this information in its decision-making, data analyzed by the Agency suggests that it is highly unlikely that leachable metal concentrations in residuals from gasification of secondary material from petroleum refining operations will be significant. See the memorandum to the record from Ms. Elaine Eby, USEPA. *Re:* Characterization of Petroleum Refining Waste and Possible Gasification Scenarios. August 2007.

[22] See 72 FR 14734 (March 29, 2007), Risk and Technology Review, Phase II, Group 2.

condition considering we were proposing to allow oil-bearing hazardous secondary materials to be gasified at facilities outside a petroleum refinery. In addition, because the Agency was taking comment on whether to expand the exclusion to address all hazardous secondary materials generated in other industries, we considered such a provision to be important. In the development of the final rule, however, we have concluded, based on analysis of the comments and further review of petroleum refinery-based gasification systems that such a condition is unnecessary and an inappropriate use of RCRA to regulate a fuel product manufactured at petroleum refineries.

The majority of the comments received did not specifically address the need for a synthesis gas specification, but rather addressed the overall inadequacy of the synthesis gas specification finalized in the ''Synthesis Gas Rule.'' Commenters suggested that the specification was too lenient and not drawn from appropriate data.[23] Several commenters also reminded the Agency of possible pending litigation.[24]

Irrespective of the concerns with the details of a synthesis gas specification, only a few commenters supported establishing a synthesis gas specification. These commenters generally agreed with the Agency's proposed premise of applying the synthesis gas specification to ensure legitimacy of the gasification process and the quality of the synthesis gas. However, other commenters suggested that applying the synthesis gas specification was without basis and inappropriate. Commenters reasoned that the purpose of 40 CFR 261.38 was to provide an exclusion from the definition of solid waste for synthesis gas generated by the gasification of hazardous waste. Under the 2002 proposal, they believed EPA was establishing that oil-bearing hazardous secondary materials generated at a petroleum refinery and re-inserted into a gasifier were excluded from the definition of solid waste because gasification was part of the production process. Given that, commenters questioned the Agency's rationale for including a hazardous waste specification to a manufactured fuel product, i.e., a product generated from a fossil fuel. Commenters reasoned that operators of gasification systems did not need a specification for synthesis gas any more than they needed a RCRA specification for gasoline, propane, petroleum coke, or any other legitimate product from a petroleum refining operation. Additionally, some commenters suggested that any questions regarding the quality of the synthesis gas were answered by the use of the synthesis gas as a fuel in power, steam, or hydrogen production on-site (subject to CAA regulations) and should serve to ensure that the synthesis gas was, in fact, a legitimate fuel.

The Agency agrees with the commenters. In this rule, we have determined that gasification is a part of the petroleum refining process and that oil-bearing hazardous secondary materials generated at a petroleum refinery and reinserted back into a gasification system located at a petroleum refinery are excluded from the definition of solid waste, provided the conditions of the exclusion are met. Hence, the Agency concludes that gasification is a legitimate fuel process that does not require a synthesis gas specification as a condition to ensure its legitimacy. Gasification systems when operated at a petroleum refinery take petroleum feedstocks and convert them into a synthesis gas comprised primarily of hydrogen, carbon monoxide, carbon dioxide and methane. Petroleum feedstocks to these systems can include petroleum coke, visbreaker tars, deasphalter pitch, as well as oil-bearing hazardous secondary materials. Available information suggests that the synthesis gas composition remains consistent regardless of the petroleum input feed. Furthermore, when used as a fuel for power generation, information available to the Agency shows that turbine specifications and other equipment specifications drive the fuel specification requirements of the synthesis gas fuel. As such, the Agency has also concluded that applying the synthesis gas specifications at 40 CFR 261.38 as presented in the 2002 proposal does not provide an additional assurance that legitimate fuel operations are occurring at gasifiers located at petroleum refineries. Therefore, in today's final rule, we are not including a condition that requires the synthesis gas generated by the gasification system to meet the specification of 40 CFR 261.38(b). The Agency has determined that the application of a hazardous waste derived synthesis gas specification is an inappropriate use of the synthesis gas specification for gasification operations at a petroleum refining.

However, we note that today's exclusion from the definition of solid waste does not exempt the device from regulation under the applicable CAA standard for the gasification device, co-product recovery units, or any related infrastructure designed to use the synthesis gas fuel to produce electricity.

C. Does the Conditional Exclusion Prohibit Oil-Bearing Hazardous Secondary Materials From Being Placed on the Land Prior to Insertion in the Gasification System?

Yes, the conditional exclusion we are amending (40 CFR 261.4(a)(12)(i)) prohibits oil-bearing hazardous secondary materials from being placed on the land prior to insertion into the petroleum refining process. This prohibition will not change with the addition of gasification as a listed petroleum refining process.

In the proposed rule, we explained our view that this condition (i.e., no placement on the land prior to re-insertion into the petroleum refining process) further defines gasification of excluded oil-bearing hazardous secondary materials as a legitimate refining operation for processing these materials because it requires that the excluded materials be handled as a valuable feed to the gasification system. We stated that we knew of no gasification system (or for that matter, any petroleum refinery) which stored these materials on the land, and that to do so would indicate that such oil-bearing hazardous secondary materials are being handled more like waste, and not as a feedstock (since because of the physical characteristics of these oil-bearing materials, the potential for them not to be released could no longer be assured, and there could be large-scale losses of the secondary material due to land placement). Thus, we reasoned that oil-bearing hazardous secondary materials from the petroleum refinery process should preclude storing the material in anything other than a tank, container, or some other device that would contain the material because as

[23] In the proposed rule, we requested comment on a number of approaches to revise the synthesis gas specification found at 40 CFR 261.38(b). In particular, we were interested in soliciting comment on the specifications for highly volatile metals and certain organics.

[24] Commenters took issue with the inadequacy of the synthesis gas specification found at 40 CFR 261.38(b). Commenters believed that the allowable concentration limits for highly volatile metals and certain organics were excessively high, the BTU value was too low, and the specification was not based on actual synthesis gas from a gasification unit. Commenters noted the Agency was challenged on the synthesis gas specification in the Comparable Fuels Rule by the Sierra Club, Natural Resources Defense Council, and the Environmental Technology Council in *Chemical Manufacturers Association* v. *EPA*, No. 98–1375 (DC Cir. Filed August 17, 1998). The case is currently being held in abeyance by the DC Circuit Court. Because the Agency has decided not to require the synthesis gas fuel meet the specifications found at 40 CFR 261.38(b), specific comments on the appropriate specification requirements are not being addressed in this rulemaking.

far as we knew, the oil-bearing hazardous secondary materials were generally comprised of tar-like, oily substances not amenable to land storage or placement.

Most of the commenters agreed with our position that some type of restriction was appropriate to prevent the oil-bearing hazardous secondary materials from being placed or stored on the land. However, some commenters did not completely agree with our characterization of these materials (i.e., tar-like oily substances) and suggested that the prohibition take into account the physical characteristics of the oil-bearing hazardous secondary materials before a total prohibition on land placement was implemented. For example, some commenters believed that the prohibition should only apply to those hazardous secondary materials that are tar-like oily substances, while other commenters suggested that we modify the wording of the prohibition to allow for land placement of hazardous secondary materials if it would not endanger the environment. One commenter stated that the hazardous secondary materials they received from a petroleum refinery could be described as chunky, angular, blocky or coarse particulates and could be safely managed on the land. However, these commenters did not provide EPA with any characterization data that would support their claims.

Given that these hazardous secondary materials would be hazardous waste if discarded instead of being gasified, and given that land placement of these types of oil-bearing hazardous secondary materials is not typical before they are reinserted back into the petroleum refinery, we see no reason to relieve them from the existing prohibition against land placement for all oil-bearing hazardous secondary materials prior to re-insertion into the petroleum refining process (i.e., gasified). This approach maintains full regulatory consistency with the exclusion found at 40 CFR 261.4(a)(12)(i) which is being amended today to include gasification as an identified petroleum refining process.

D. Does the Conditional Exclusion Prohibit Oil-Bearing Hazardous Secondary Materials From Being Speculatively Accumulated Prior to Insertion in the Gasification System?

Yes. In today's rule, the conditional exclusion we are amending (40 CFR 261.4(a)(12)(i)) includes the requirement that the oil-bearing hazardous secondary materials not be speculatively accumulated prior to insertion into the petroleum refining process. This provision will not change with the addition of gasification as a listed petroleum refining process.

In the proposed rule, we stated that the speculative accumulation provision ensures that legitimate quantities of oil-bearing hazardous secondary materials are being recycled and re-inserted into the petroleum refining process rather than being stored to avoid regulation. We reasoned that this condition was necessary to assure that recycling actually occurs, and that such materials are not discarded by being stored for extended periods of time. Furthermore, we stated that this condition is consistent with the no speculative accumulation condition we adopted for excluded oil-bearing hazardous secondary materials returned to the petroleum refinery process (40 CFR 261.4(a)(12)(i)).

As such, we are promulgating, as proposed, the speculative accumulation provision for oil-bearing hazardous secondary materials prior to their insertion into the petroleum refinery process. This requirement should ensure that such materials are not ''over accumulated,'' an indication of discard, but are being legitimately recycled, which maintains regulatory consistency with the existing exclusion we are amending at 40 CFR 261.4(a)(12)(i).

E. Does the Conditional Exclusion Regulate Certain Metals in Residuals Generated from the Gasification Process?

No. In today's final rule, we are removing the proposed condition that materials (both co-products and residues) generated by the gasification system not exceed the nonwastewater Universal Treatment Standards (UTS) (40 CFR 268.48) for antimony, arsenic, chromium, lead, nickel, and vanadium when placed on the land.[25] Under today's rule, and consistent with both the proposal and the existing exclusion found at 40 CR 261.4(a)(12)(i), we are classifying residues generated after the gasification process as newly generated. The determination as to whether the gasification residues (i.e., waste) or any other residue generated after reinsertion into the petroleum refining process are hazardous will be based on whether the residues exhibit a hazardous waste characteristic(s) when generated (i.e., after the oil-bearing hazardous secondary material is gasified). Should a residue exhibit a characteristic, such as leaching toxic metals at levels above the prescribed standards, it will be required to be managed in compliance with all applicable RCRA hazardous waste regulations, including the Land Disposal Restrictions (see 40 CFR 268.48).[26] As for co-products, they are fully excluded as products and are outside RCRA jurisdiction unless discarded and/or disposed.

In our proposed rule, we requested comment on a condition to the exclusion establishing leachate limits for six toxic metals in the gasification co-products and residuals prior to any placement on the land. We considered this condition to ensure that co-products and residues generated by the gasification process and that were to be placed on the land did not contain toxic metals with a potential for leaching greater than allowed by the requirements of the Land Disposal Restrictions (LDR) program. (See 67 FR at 13691, March 25, 2002.) In developing this possible condition, we were influenced by the condition established for hazardous waste-derived products that are used in a manner constituting disposal (see 40 CFR 266.20). These materials are required to meet the appropriate LDR treatment standards prior to use as products applied to the land (e.g., fertilizers). We reasoned that requiring this same condition for co-products and residuals would ensure legitimate fuel manufacturing by applying the same land disposal provisions to the co-products and residuals that would have existed had the material (i.e., the listed waste) not been excluded from the definition of solid waste. Further, it was reasoned that this proposed condition would be needed to assure that the gasification system is operated for the purpose claimed—conversion of organic matter in the hazardous secondary materials into fuels (or intermediates), while removing metals from raw synthesis gas and trapping those metals in an inert matrix. The levels in the proposed condition would provide a means of quantifying this premise.

We received comments that both supported and opposed this condition. Commenters opposed to the condition stated that there was no need to impose the UTS requirements, beyond what the regulations (*e.g.,* 40 CFR 261.4(a)(12)(i)) already required for residues generated from the petroleum refining process (*i.e.,* the characteristic test), and that EPA had provided no rationale for imposing the additional UTS

[25] Universal Treatment Standards (UTS) are concentration-based treatment levels that must be met before a RCRA hazardous waste can be land disposed. These treatment standards can be found in 40 CFR 268.40.

[26] If the Agency receives evidence to suggest that these gasification residues routinely have the potential to adversely affect human health and the environment, the Agency could list them as hazardous under RCRA.

requirements. As proposed, the condition would apply to any residual regardless of its characteristic determination. Other commenters, however, believed that EPA had not gone far enough, and that the residuals generated during the gasification process should be certified to meet all the nonwastewater UTS (both organic and inorganic constituents). Without such limits on hazardous organics, the commenters argued that substantial releases to the environment might occur because these residuals would be allowed in landfills not subject to subtitle C regulations.

The Agency rejects the suggestion of the commenters that gasification residuals should be tested for all UTS constituents. As a result of studies and analyses conducted by EPA in support of the listing determinations for petroleum refinery wastes, as well as development of the LDR treatment standards for these wastes, the characterization of these materials is well documented, and does not represent all the UTS constituents. The suggestion that it is necessary to require these residuals meet all the nonwastewater UTS for all organic and inorganic constituents is therefore without technical justification.

In response to the commenters arguing against imposing the UTS requirements for the six metals, the Agency set about establishing further justification for this condition. This began with a more detailed analysis of the characterization data for petroleum refining waste collected as part of the LDR program. We reviewed available data presented in various Treatment Technology Background Documents to get a better understanding of the total concentration levels of these six metals in the listed waste. As a result of this effort, we were able to collect concentration data for nine listed petroleum refining wastes. Next, based on information collected as part of the proposed rule, as well as information presented in two recent DOE studies, we developed gasification scenarios using a combination of petroleum coke and oil-bearing hazardous secondary materials as feedstock to gasifiers with different feed rates.[27] As a result of this analysis, we concluded, based on two scenarios we believe are most representative of possible gasification activities at petroleum refineries, that gasification residues would achieve the UTS levels for all metals, except for vanadium in one scenario and chromium in the other. With regard to chromium, the concentration level was below the characteristic level, but above the UTS level. As for vanadium, it was determined that petroleum coke (a product) contributed most of the vanadium to the gasifier, and that vanadium concentrations in the gasification residuals would not be affected when feeding petroleum coke alone or in combination with oil-bearing hazardous secondary materials.

Although this analysis showed chromium levels above the UTS in one scenario, the Agency is convinced that chromium concentrations in oil-bearing hazardous secondary materials have decreased from the levels found in our characterization studies, which were conducted in 1988, 1992, and 1998 and therefore will be lower than what we used in our analysis (*i.e.*, the gasification residuals will have concentration levels below the UTS). This is based on information in the preamble for the August 1998 listing rule promulgating the exclusion at 261.4(a)(12)(i) that indicates that chromium levels in these hazardous secondary materials will decrease due to a prohibition on chromium-based water treatment chemicals in industrial cooling towers, as a result of Clean Air Act requirements (see 40 CFR part 63, subpart Q.)[28] Furthermore, EPA believes that not only for chromium, but lead concentrations (which are below the UTS levels in the analysis we conducted) in the secondary materials will decline with time. This is due to the overall reduction in the use of these metals throughout the refinery (*e.g.,* leaded gasoline is no longer produced). In conclusion, as a result of the additional analysis conducted in response to commenters concerns regarding the imposition of the UTS requirements, as well as our decision to amend 40 CFR 261.4(a)(12)(i) because we have determined that gasifiers are a part of the petroleum refinery process, the Agency has eliminated the condition requiring material generated by the gasification system to meet the UTS standards for antimony, arsenic, chromium, lead, nickel, and vanadium prior to their placement on the land. As such, oil-bearing hazardous secondary materials inserted to the gasification system, like other petroleum refining processes, are excluded from the definition of solid waste, at the point of generation, provided the conditions of the exclusion are met. Residuals generated after the gasification process are, therefore, considered a new point of generation. If a gasifier residual is determined to be characteristically hazardous, it must be managed as a hazardous waste (if discarded), including being treated to the UTS. These standards would require treatment for the characteristic, as well as any underlying hazardous constituents reasonably expected to be present. Underlying hazardous constituents include both organic and inorganic constituents. This is consistent with the current petroleum refinery exclusion found at 40 CFR 261.4(a)(12)(i), and addresses our greatest concern—assuring that gasification residues do not create potential risks when disposed.

As a final note, the Agency distinguishes between residuals generated from the gasifier and those residuals generated from the processing of oil-bearing hazardous secondary materials before they are reinserted into the petroleum process. EPA discussed in the final rule for the petroleum refinery exclusion (63 FR 42110, August 6, 1998), that some oil-bearing hazardous secondary materials cannot be directly inserted into a particular petroleum refining process, and therefore may require some type of processing or preparation beforehand (*e.g.*, centrifugation, desorption, settling, etc.). See 63 FR at 42113–42114, 42128. These activities are generally viewed as part of normal petroleum refining operations.

During the 1998 rulemaking, however, we were particularly concerned with the management of any residuals generated from the processing or recycling of oil-bearing hazardous secondary materials prior to or before insertion back to the petroleum refining process, and thus developed an approach to ensure that if such residuals are discarded, that they continue to be managed appropriately. In the 1998 final rule, we clarified that the exclusion for oil-bearing hazardous secondary materials returned to the petroleum refining process only extends to the materials actually inserted into the petroleum refinery process, and any residuals generated from recycling or processing oil-bearing hazardous secondary materials prior to insertion into the refining process that: (1) Would have otherwise met a listing description when originally generated; and (2) are disposed of or intended for disposal, are designated as F037 waste and must be managed in accordance with all the applicable Subtitle C RCRA hazardous waste requirements. The language was

[27] See the memorandum to the record from Ms. Elaine Eby, USEPA. Re: Characterization of Petroleum Refining Waste and Possible Gasification Scenarios. August 2007.

[28] On September 8, 1994 (59 FR 46339), EPA issued a final MACT rule that eliminated the use of chromium-based water treatment chemicals and subsequently chromium compound emissions from industrial process cooling towers.

intended to clarify that residuals that are not ultimately inserted are not excluded, and that these discarded residuals are classified as F037 waste.

The Agency did not include in the F037 listing residuals generated after reinsertion into the petroleum refining process, *e.g.*, coke fines from coking operations. These types of residues generated after insertion into the petroleum refining process, are considered newly generated waste subject to the characteristic test, and not F037 waste. This is the exact reasoning we are applying to today's rule, *i.e.*, if residuals are generated as a result of the processing of oil-bearing hazardous secondary materials prior to gasification, and if these residuals are intended for discard and the original oil-bearing hazardous secondary materials was a listed waste, these residuals are classified as F037 waste. Similarly, if the original waste exhibited one or more hazardous waste characteristics, and the processing, prior to gasification, resulted in a residual destined for disposal, that residue would be characterized as a newly generated waste, subject to the characteristic test.

F. Does the Conditional Exclusion Require Additional Recordkeeping and Reporting Requirements?

No. Under today's rule, no additional recordkeeping or reporting requirements will be required. Under the exclusion at 40 CFR 261.4(a)(12)(i), oil-bearing hazardous secondary materials are not solid wastes, for purposes of Subtitle C regulation, and therefore are not (by definition) hazardous wastes from the point of generation. Therefore, requirements that normally apply to the management of hazardous wastes, such as notification or the use of a hazardous waste manifest, do not apply to these materials, provided the conditions of the exclusion are satisfied.[29]

In the approach used for the proposed rule, oil-bearing hazardous secondary materials could be processed in a gasification system either on-site or off-site of a petroleum refinery (*i.e.*, materials could be sent to gasifiers at facilities that are not located within petroleum refineries (SIC 2911)). We noted that allowing these materials to go to facilities outside the petroleum refining industry was somewhat different and more expansive than what was permitted for the other processes previously included in 40 CFR 261.4(a)(12)(i). Because of this expansion, we asked for comment on whether additional records and/or reporting requirements might be necessary. We proposed this alternative strategy (*i.e.*, gasification facilities could be located either on-site or off-site of a petroleum refinery) because we believed that excluding oil-bearing hazardous secondary materials processed in gasification systems operating physically outside of a petroleum refinery could still be an extension of the petroleum refining process. It is not unusual for the refining of oil into fuels to occur at multiple locations.

Many commenters generally were supportive of allowing off-site facilities as part of the exclusion. However, there were some commenters that strongly believed that gasification should only occur at a petroleum refinery. Commenters supporting off-site gasification agreed with the Agency's assessment that any gasification process operated off-site would be technically indistinguishable from the types of gasifiers operated at a petroleum refinery. One commenter believed that generators would be better served by transporting the oil-bearing hazardous secondary materials to a centralized processing facility for conversion to synthesis gas, and if the exclusion is not extended to ''off-site'' gasification, the exclusion would be meaningless and have limited, if any, practical use.

The Agency recognizes and agrees, in part, with the potential flexibility afforded to petroleum refineries that have an option of using off-site gasification facilities (*i.e.*, gasification systems not located at a petroleum refinery). However, we have decided not to promulgate this aspect of the rule. The Agency has concluded that a gasification operation located off-site of a petroleum refinery is inconsistent with our basic premise for promulgating this exclusion—gasification is a part of the petroleum refining process. As such, EPA is electing to simplify its approach today by allowing this exemption only for facilities that clearly meet the definition of petroleum refineries.[30] It should be noted, however, that under the provisions of the exclusion, oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision.[31]

VI. What Will the Effect of the Final Rule Be on Recycling and Energy Recovery?

Predicting the impacts of any rule is a difficult task. In most cases, the marketplace determines the adoption of new technologies and/or practices. In the case of gasification, it is doubly difficult as both the waste management market and the fuels market will impact adoption of the technology more than any regulatory provision. Today's conditional exclusion provides operators of petroleum refineries an option to consider. This does not mean that every petroleum refinery will adopt this technology as part of their operations, but it may mean that some will adopt the technology to provide for power or steam production less expensively, or for the generation of hydrogen used elsewhere in the petroleum refining process, or sold as a fuel or feedstock. What the rule does do is provide operational flexibility to allow petroleum refiners to adopt a technology that generates valuable products as a result of processing oil-bearing hazardous secondary materials that can and have historically been managed as solid and hazardous waste. With this rulemaking, petroleum refiners can decide whether to invest in the development of gasification with the knowledge that it will also allow them to increase their production efficiency and reduce their costs through the conversion of these materials.

VII. How Will These Regulatory Changes Be Administered and Enforced in the States?

Under section 3006 of RCRA, EPA may authorize qualified states to administer their own hazardous waste

[29] It should be noted, however, that under 40 CFR 261.2(f) documentation is necessary to demonstrate that the conditions of an exclusion have been met. 40 CFR 261.2(f) does not contain specific record keeping requirements, but it does require the respondent to bear the burden of showing, through appropriate documentation, that the excluded material is being processed in a manner that meets the conditions in the claimed exclusion.

[30] It should be noted that petroleum refineries that ship oil-bearing hazardous secondary materials to an off-site gasification system not located at a petroleum refinery (SIC 2911) would not meet the conditions of this exclusion and would be subject to the appropriate Subtitle C regulations. See, for example, the Synthesis Gas Rule at 40 CFR 261.38(b). Furthermore, a gasification facility that accepts oil-bearing hazardous secondary materials from a petroleum refinery can not claim to be part of the petroleum refining process and utilize this exclusion, even if the synthesis gas is sent back to the petroleum refinery for use. However, we do recognize that there will be situations where petroleum gasification facilities are built in close proximity (*e.g.*, adjoining land) and are part of the petroleum refining facility. In general, such facilities would be within the scope of the exemption being promulgated today.

[31] See the February 8, 2002 letter from Mr. Robert Springer, Director of the Office of Solid Waste to Mr. Rob Short, Managing Director Tetra Process Services, L.C. In this letter, Mr. Short posed twelve detailed questions concerning the regulatory status of oil-bearing hazardous secondary materials under the RCRA. Specifically, clarification was requested on numerous aspects of the exclusion at 40 CFR 261.4(a)(12)(i).

programs in lieu of the federal program within the state. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for state authorization are found at 40 CFR Part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state until the state adopted the federal requirements as state law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was amended by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by the statute to implement these requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states do so.

Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see also 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, considered less stringent than previous federal regulations.

Today's exclusion is finalized pursuant to non-HSWA authority and is considered to be less stringent than the current federal requirements. Therefore, states will not be required to adopt and seek authorization for the finalized changes. EPA will implement the changes to the exemptions only in those states which are not authorized for the RCRA program. Nevertheless, EPA believes that this rulemaking has considerable merit, and we thus strongly encourage states to amend their programs and become federally-authorized to implement this rule.

VIII. What Are the Costs and Benefits of the Final Rule?

The costs and benefits of any regulatory action are traditionally measured by the net change in social welfare that it generates. The Agency's economic assessment conducted in support of today's final rule evaluates costs, cost savings (benefits), waste quantities affected, and other impacts, such as environmental justice, children's health, unfunded mandates, regulatory takings, and small entity impacts. To conduct this analysis, we prepared a baseline characterization for waste management and gasification at petroleum refineries, developed and implemented a methodology for examining impacts, and followed appropriate guidelines and procedures for examining equity considerations, children's health, and other impacts. Because EPA's data are limited, the estimated findings from these analyses should be viewed as national, not site-specific impacts.

Proper baseline specification is vital in the assessment of incremental costs, benefits, and other economic impacts associated with a rule that would expand the exclusion for oil-bearing hazardous secondary materials that are utilized to generate fuels and other chemicals. The baseline essentially describes the world absent any expanded exclusion. The incremental impacts of today's final rule are evaluated by predicting post-rule responses with respect to baseline conditions and actions. The baseline, as applied in this analysis, is assumed to be the point at which the final rule is published. A full discussion of baseline specifications is presented in the economic assessment document completed for this rule.[32]

As outlined above, the final rule creates an exclusion for oil-bearing hazardous secondary materials generated at a petroleum refinery if this material is used at a petroleum refinery as an input for the production of synthesis gas. Because not all petroleum refineries will elect to include a gasification system as part of their petroleum refinery, the impacts of the final rule will depend significantly on the number of petroleum refineries that decide to adopt the technology and use the exclusion and the baseline waste management practices of these petroleum refineries. To account for these factors in this analysis, a bottom-up analytic approach was developed for estimating impacts based on the decisions of individual petroleum refineries to exclude or not exclude their oil-bearing hazardous secondary materials under the final rule. The analysis of each affected petroleum refinery begins by estimating the likely costs and benefits associated with its potential use of the exclusion. A key assumption of the analysis is that a petroleum refinery will divert its oil-bearing hazardous secondary materials to gasification if the following two conditions apply: (1) The benefits realized by the petroleum refinery if it uses the exclusion exceed the related costs, and (2) the benefits realized by the gasification system receiving the petroleum refinery's oil-bearing hazardous secondary materials exceed the costs associated with accepting this material.

After determining whether a petroleum refinery is likely to divert its oil-bearing hazardous secondary materials to gasification, we estimate the total impacts associated with its decision to use or not use the exclusion. If the petroleum refinery is unlikely to use the exclusion, we assume zero impacts. If the analysis suggests that the petroleum refinery will use the exclusion, we estimate impacts as the sum of three items: (1) The savings that the petroleum refinery will experience by diverting its oil-bearing hazardous secondary materials to gasification, (2) savings for the petroleum refinery that receives this material and uses it as a feedstock in its gasification system, and (3) indirect third-party costs. Indirect third-party costs include increased virgin fuel and material costs for facilities that receive and manage the petroleum refinery's oil-bearing hazardous secondary materials in the baseline (*i.e.*, prior to the promulgation of the final rule) and either burn it for energy recovery or recycle it to recover metals or other valuable materials.

To complete our analysis and estimate the total impacts of the final rule, we summed the impacts associated with oil-bearing hazardous secondary materials diverted to gasification under the exclusion. In addition, we assessed the impacts of the rule under two scenarios to account for uncertainty in the operational status of gasification systems that are planned, but have not yet gone online: a low-capacity scenario reflecting existing gasification capacity

[32] *Assessment of the Potential Costs, Benefits, and Other Impacts of the Exclusion for Gasification of Petroleum Oil-Bearing Secondary Materials—Final Rule*, August 2007.

and a high-capacity scenario reflecting existing and planned capacity.

This rule is projected to result in a benefit to society in the form of net cost savings to the private sector, on a nationwide basis, thereby allowing for the more efficient use of limited resources elsewhere in the market. For more detail regarding the data sources, key assumptions, and any limitations associated with the analyses of the economic impacts, the reader is referred to the economic assessment document completed for this rule, which can be found in the docket to this rulemaking.

As described in the methodology overview in EPA's economic assessment document, we estimated the impacts of the final rule under two gasification capacity scenarios: (1) A low-capacity scenario that reflects the capacity of the three petroleum refinery gasification systems that are known to be operating; and (2) a high-capacity scenario that reflects the capacity of these three systems plus two additional units that were planned as of 2003, but have not yet gone online. Results for both of these scenarios are presented as a range of the potential net social benefits of the rule, in order to help account for the uncertainty regarding the future operational status of planned units not yet in operation.[33]

The central conclusion of our analysis states that approximately 324,300 tons of oil-bearing hazardous secondary materials generated by 152 refineries would qualify for the exclusion each year. Of this quantity, petroleum refineries currently send approximately 205,500 tons offsite for disposal or recycling; the remaining 118,800 tons are processed onsite. Of the 324,300 tons of oil-bearing hazardous secondary materials qualifying for the exclusion, between 123,300 and 177,000 tons are likely to be excluded by petroleum refineries each year. This represents approximately 38 percent to 55 percent of the material eligible for the exclusion.

We estimate that the rule will yield between $46.4 million and $48.7 million in net social benefits per year. Avoided waste management costs make up the most significant share of the benefits of the rule, followed by feedstock savings for gasification systems. Commercial waste management facilities that manage oil-bearing hazardous secondary materials in the baseline may experience annual revenue losses of $10.8 million to $15.1 million under the final rule. Based on the limited data available on the revenues of these facilities, this loss represents a small fraction of their revenues. The impact of the final rule depends significantly on the cost of incineration. The impacts reflect the average cost of incinerating bulk sludge, as reported by the Environmental Technology Council (ETC). If we use the low end of ETC's cost range, the net social benefits of the rule decline to $5.2 million to $25.5 million per year.[34]

IX. 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.'' It has been determined that this rule is a ''significant regulatory action'' because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this rule to the Office of Management and Budget (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.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. As indicated above, the annual cost savings of the rule are estimated to be $46.4 million to $48.7 million. This analysis is contained in the document ''Assessment of the Potential Costs, Benefits, and Other Impacts of the Exclusion for Gasification of Petroleum Oil-Bearing Secondary Materials—Final Rule.'' A copy of the analysis is available in the docket for this regulation.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA is amending an existing exclusion from the definition of solid waste that applies to hazardous secondary materials generated at a petroleum refinery when these materials are inserted back into the petroleum refining process (see current exclusion found at 40 CFR 261.4(a)(12)(i)). With today's final rule, the conditional exclusion will be revised to add ''gasification'' to the list of identified petroleum refinery processes into which hazardous secondary materials can be legitimately recycled. Materials excluded under 40 CFR 261.4(a)(12)(i) are not solid wastes for purposes of Subtitle C regulation, and therefore are not (by definition) hazardous wastes from the point of generation. Therefore, requirements that normally apply to the management of hazardous wastes, such as notification or the use of a hazardous waste manifest, do not apply to these materials, provided the conditions of the exclusion are satisfied.

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 are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, or any other statute. This analysis must be completed unless the agency is able to certify that the rule will 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 purposes of assessing the impacts of today's rule on small entities, small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently

[33] The IGCC unit located at the El Dorado, Kansas Refinery was used as part of this analysis. However, as of 2006, this unit is no longer in operation.

[34] ETC, Incinerator and Landfill Cost Data, *http://www.etc.org/costsurvey8.cfm,* accessed September 8, 2006.

owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

The final rule is projected to result in benefits/cost savings for those petroleum refineries that use the exclusion. In addition, those petroleum refineries that choose not to take advantage of the subject exclusion would experience no direct impact from this final rule. Consequently, the rule is not expected to adversely affect small entities that generate oil-bearing hazardous secondary materials eligible for the exclusion. Nevertheless, we developed facility-specific impact estimates for petroleum refineries that may be classified as small entities to show how they would likely benefit from the final rule. The SBA considers a petroleum refinery to be a small business if it has ''no more than 1,500 employees or more than 125,000 barrels per calendar day total Operable Atmospheric Crude Oil Distillation capacity.'' Based on the available data, it is not feasible to measure the distillation capacities of each refinery affected by the rule; therefore, we relied on facility employment data to determine which petroleum refineries are small entities. Our analysis of employment data suggests that 37 of the 152 refineries affected by the rule are small entities.

The benefits (cost savings) of the final rule on each small business are expected to range from $0 to $2.0 million per year. It is further estimated that the aggregate small entity impacts total $2.1 million to $2.5 million per year in cost savings, which represents 4.3 to 5.4 percent of the annual impact of the final rule. Similarly, the quantity of material eligible for the exclusion that is generated by small businesses, 16,895 tons, accounts for 5.2 percent of the total oil-bearing hazardous secondary materials tonnage eligible for the exclusion. We have therefore concluded that today's final rule will relieve regulatory burden for affected small entities.

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 to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one 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.

Based on these criteria set forth by the UMRA, the final rule does not contain a significant unfunded mandate. As reported in the analytic results presented above, the rule is not likely to result in annualized costs of $100 million or more, either for the private sector or for state, local, and tribal governments.

Today's rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector, as the rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Furthermore, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (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'' is 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.''

This final rule does not have Federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it will not impose any requirements on states or any other level of government. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. No Tribal governments are known to own or operate petroleum refineries that generate oil-bearing hazardous secondary materials subject to the final rule. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks 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, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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 Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This 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. On the contrary, this rule is expected to result in energy savings, as described below.

EPA estimates that of the 324,300 tons of oil-bearing hazardous secondary material qualifying for the exclusion, approximately 36,735 tons are currently managed through energy recovery in the baseline. Based on the results of our analysis, we estimate that between 3,700 to 18,700 tons of the 36,735 tons currently being reported as being recovered (e.g., managed) for energy recovery will be diverted to gasification at petroleum refineries as a result of the final rule. This represents an energy loss of 19,800 to 101,300 MMBtu for facilities that manage this material for energy recovery in the baseline. This is the equivalent of 3,400 to 17,500 barrels of crude oil per year.[35] The petroleum refineries that gasify this oil-bearing hazardous secondary material under the final rule, however, would use the resulting synthesis gas as a fuel for the production of power or other petroleum products, which would (at least partially) offset the 19,800 to 101,300 MMBtu energy loss mentioned above. Moreover, gasification of the 119,600 to 158,300 tons of excluded material not burned for energy recovery in the baseline would yield additional energy savings. Assuming that all of the energy content of this material is retained in the resulting synthesis gas, the gasification of this material represents energy savings of 648,300 to 858,000 MMBtu per year. Therefore, accounting for the estimated energy loss of 19,800 to 101,300 MMBtu associated with oil-bearing hazardous secondary materials burned for energy recovery in the baseline, this rule could yield a net energy savings ranging from 628,500 to 756,700 MMBtu per year.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 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 final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

Under the final rule, EPA estimates that 123,000 to 177,000 tons of oil-bearing hazardous secondary materials will be diverted to gasification processes from their baseline disposition at hazardous waste treatment, storage, and disposal facilities (TSDFs). As such, the final rule will concentrate the processing of excluded material at the limited number of petroleum refineries that could potentially use this material as a feedstock under the final rule. However, EPA does not believe that gasification of this material represents a greater risk to the public than baseline management practices. Rather than managing the excluded material as hazardous waste and transporting it to more widely dispersed TSDFs, as is currently the case (e.g., under the baseline), the final rule would help limit distribution of these materials such that they are instead managed at their source of generation (e.g., petroleum refineries).

EPA also assessed the demographic characteristics of populations living within a one-mile radius of petroleum refineries with gasification systems using geo-coded data from the U.S. Census Bureau. This analysis shows that the areas surrounding gasification systems affected by the rule have disproportionately high minority and low-income populations when compared to the national average. However, based on a number of published studies, areas in close proximity to TSDFs and combustion facilities also have disproportionately high minority and low-income populations that are similar to or greater than those of petroleum refineries with gasification systems. For instance, among the individuals living within one mile of the existing and planned gasification systems included in our analysis, 15.8 percent are low-income individuals, compared to 15.7 percent and 22.3 percent near TSDFs and hazardous waste combustion facilities, respectively. Similarly, 28.1 percent of the individuals living near existing and planned gasification systems are minorities, compared to 27.2 percent living near TSDFs and 38.3 percent living near hazardous waste combustion facilities. These findings show that the percentages of low-income and minority populations near TSDFs are similar to or greater than those of populations living near petroleum refineries with gasification systems.

The implication of our analyses is that low-income and minority populations

[35] According to the U.S. Energy Information Administration (EIA) Annual Energy Outlook 2006, Table A2, one barrel of crude oil produced has a heat content of 5.8 million Btu.

will not bear a disproportionate share of any human health or environmental effects associated with shifting the processing of excluded oil-bearing hazardous secondary materials to gasification systems. Furthermore, as less oil-bearing hazardous secondary materials will be received by TSDFs and hazardous waste combustion facilities, low-income and minority populations living near these facilities would likely experience a potential reduction in risk under the final rule.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective February 1, 2008.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Excluded hazardous waste, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: December 20, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, 40 CFR chapter I is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM; GENERAL

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

■ 2. Section 260.10 is amended by adding in alphabetical order the definition of ''Gasification'' to read as follows:

§ 260.10 Definitions.

* * * * *

Gasification. For the purpose of complying with 40 CFR 261.4(a)(12)(i), gasification is a process, conducted in an enclosed device or system, designed and operated to process petroleum feedstock, including oil-bearing hazardous secondary materials through a series of highly controlled steps utilizing thermal decomposition, limited oxidation, and gas cleaning to yield a synthesis gas composed primarily of hydrogen and carbon monoxide gas.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6938.

■ 4. Section 261.4 is amended by revising paragraph (a)(12)(i) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(12)(i) Oil-bearing hazardous secondary materials (*i.e.*, sludges, byproducts, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911—including, but not limited to, distillation, catalytic cracking, fractionation, gasification (as defined in 40 CFR 260.10) or thermal cracking units (i.e., cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery and still be excluded under this provision. Except as provided in paragraph (a)(12)(ii) of this section, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (i.e., from sources other than petroleum refineries) are not excluded under this section. Residuals generated from processing or recycling materials excluded under this paragraph (a)(12)(i), where such materials as generated would have otherwise met a listing under subpart D of this part, are designated as F037 listed wastes when disposed of or intended for disposal.

* * * * *

[FR Doc. E7–25240 Filed 12–31–07; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 73, No. 1

Wednesday, January 2, 2008

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 and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Food Stamp Application, Form FNS–252 and a New On-Line Application for Stores, Form FNS–252–E

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections.

DATES: Written comments must be received on or before March 3, 2008.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Andrea Gold, Chief, Retailer Management Branch, Benefit Redemption Division, Food and Nutrition Service, U. S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Andrea Gold at (703) 305–1863 or via e-mail to *BRDHQ-WEB@fns.usda.gov.*

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 404.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: The public can download the Form FNS–252 from the FNS Web site at: *http://www.fns.usda.gov/fsp/retailers.*

Requests for additional information or copies of the information collection should be directed to Andrea Gold at (703) 305–2456.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program —Store Applications.

OMB Number: 0584–0008.

Form Number: FNS–252, 252–E, 252–2, and 252–C.

Expiration Date: March 31, 2009.

Type of Request: Revision of a currently approved collection of information.

Abstract: Section 9 of the Food Stamp Act of 1977, as amended, (the Act) (7 U.S.C. 2018), requires retail food stores to submit applications to the Food and Nutrition Service (FNS) for approval prior to participating in the Food Stamp Program (FSP). Currently, retailers who want to apply for authorization to participate in the FSP must complete Form FNS–252 (a paper application) manually. Once completed, applicant retailers must mail/deliver the application to the appropriate FNS Field Office, along with other required documents, for processing. A very small percentage of entities (1%) fax their applications. FNS field offices review applications to ensure that the firm is eligible. The firm is then authorized to accept FSP benefits, or denied. Field office staff manually enters the store application data into the nationwide Store Tracking and Redemption System (STARS) database using a series of on-line screens.

FNS is committed to complying with the E-Government Act of 2002, which requires that, when practicable, federal agencies use electronic forms, electronic filing, and electronic signature to conduct official business. Current technological opportunities allow us to improve information collection in accordance with these statutes. FNS is developing an on-line application, Form FNS–252–E, as an electronic alternative for retailers who wish to complete and submit an application via the Internet from the FNS Web site.

FNS regional and field office staff have suggested ways the data collection on the current Form FNS–252 could be improved when designing the new on-line application. As a result, FNS will revise the current Form FNS–252. The purpose of the revision to the currently approved collection for the Food Stamp Program Application for Stores, Form FNS–252, is to continue the authority for the established application form and to update the number of collection hours. Efforts are being made to streamline the information collected on the application and make it easier to understand. Questions may be re-phrased or combined in order to provide clearer language. Those questions that no longer have any relevance to the authorization process will be deleted. We will include detailed instructions and provide on-line help, where appropriate. The application form will be developed in a customer and computer friendly format.

FNS also intends to amend the information contained on pages 6 and 7 of the current Form FNS–252. These changes are based on recommendations from FNS'' legal counsel to reduce redundant, ambiguous and technical language, and to provide clearer language describing our training requirements and the penalties for violating Program rules. Due to the importance of the information contained in this section, and to ensure that all our retailer applications provide the same information, FNS is also seeking approval to revise all forms associated with OMB No. 0584–0008, which are the Meal Service application, Form FNS–252–2, and the supplemental to the Retailer Application, Form FNS–252–C.

We are soliciting public comments on the content, format, and design of the revised Form FNS–252 and the new on-line Form FNS–252–E.

We do not know how many retailers will avail themselves of the on-line application; however, we estimate that, initially, approximately 40 percent of all retailers will use the on-line Form FNS–252–E. We are planning to reach out to retailers and industry representatives to

promote this on-line alternative. As noted above, we will evaluate the revised Form FNS–252 and the new on-line application, Form FNS–252–E, on the appropriateness and clarity of the form's content, format, and design. Before making final changes to these forms, we will consider feedback from the public. The burden associated with the Form FNS–252 and the on-line Form FNS–252–E is determined from the number of all newly authorized stores obtained from the STARS Database. We used the number of newly authorized retailers (21,801) from FY 2006 as the base number for current FY 2007 estimates. We further estimate that 40 percent (8,720) of the 21,801 applications will be submitted using the on-line Form FNS–252–E and 60 percent (13,081) will be submitted using Form FNS–252 (paper application). In our last submission to OMB, we estimated that it takes a retailer, on average, 19.9 minutes to complete Form FNS–252. For this submission to OMB, as a result of anticipated improvements, we estimate that it will take retailers, on average, 18.9 minutes to complete either application form (Form FNS–252–E or Form FNS–252). We estimate the annual burden for the new on-line Form FNS–252–E to be 2,747 hours [8,720 (21,801 affected retailers × 40% new authorizations) × .315 (18.9 minutes)]. We further estimate the annual burden for the revised Form FNS–252 to be 4,339 hours [13,081 (21,801 affected retailers × 60% new authorizations) × .332 (18.9 minutes)].

Respondents: Retail food stores.

Estimated Number of Respondents: 45,765.

Number of Responses per Respondent: 1.

Estimated Number of Annual Responses: 73,074.

Estimated Time per Response: 0.114 or 7 minutes (rounded from 6 minutes and 50 seconds).

Estimated Total Annual Burden on Respondents: 8,309.

Dated: December 19, 2007.

Roberto Salazar,

Administrator, Food and Nutrition Service.

BILLING CODE 3410–30–P

Form **FNS-252** US Department of Agriculture Food and Nutrition Service	**FOOD STAMP APPLICATION FOR STORES**	OMB No 0584-0008

	FNS Number	Authorization Initials	Date Authorized
FOR FIELD OFFICE USE ONLY			/ /

FNS Tracking Number

1 When did or when will the store open for business under your ownership (MM/DD/YYYY):
_____ / _____ / _____

2 Store Name:

3 Chain Store Number (if applicable):

4 Store Location Address (do not enter PO Box here):
Street Number: | Street Name: | Additional Address (Bldg #, Unit #, Stall #, etc.):
City: | State: | Zip Code: -

5 Store Mailing Address (Skip if your mailing address is the same as your store location. If you enter a PO Box, leave street number and street name blank):
Street Number: | Street Name: | P.O. Box: | Additional Address (Bldg #, Unit #, Suite #, etc.):
City: | State: | Zip Code: - | If foreign address, add Country:

6 Store Telephone Number:
( ) -

7 Alternate Telephone Number:
( ) -

8 Do you want to receive official Food Stamp Program correspondence by email? ☐ Yes ☐ No
8a If yes, enter owner or store email address:

9 Is your business a delivery route, farmers' market or specialty food store that primarily sells one food type such as meat/poultry, seafood, bread, or fruits/vegetables? ☐ Yes ☐ No

9a If Yes, check the **one** store type that best describes your store:
☐ Meat/Poultry Market ☐ Bakery ☐ Farmers' Market
☐ Seafood Market ☐ Produce Market ☐ Delivery Route

10 Type of Ownership (check only **one** box):
☐ Privately-Held Corporation ☐ Sole Proprietorship ☐ Limited Liability Company ☐ Government Owned
☐ Publicly Owned Corporation ☐ Partnership ☐ Nonprofit Cooperative

If Privately-Held Corporation or LLC, enter the name and address of your corporation as on record with the State. If Government Owned, enter the name and address of the responsible government Agency. If Publicly Owned Corporation, enter the name and address of the parent corporate office. All others skip to the next question.

11a Corporation Name:

11b Corporation Address:
Street Number: | Street Name: | Additional Address (Bldg #, Unit #, Suite #, etc.):
City: | State: | Zip Code: - | If foreign address, add Country:

11c If Publicly Owned or Government Owned, enter a contact person:
Contact Person Name: | Telephone Number: ( ) - | E-Mail Address:

Enter the name and home address of all officers, owners, partners, and members. You must enter spousal information for each owner and officer if your business is located in a community property state (AZ, CA, ID, LA, NV, NM, TX, WA, WI). **If this is a public corporation or government owned store, skip to question 13.**

12a Print name as it appears on the social security card:

First Name:	Middle Name:	Last Name:	
Street Number:	Street Name:	Additional Address (Unit #, Suite #, Apt #, etc.):	
City:	State:	Zip Code: -	If foreign address, add Country:
Social Security Number: ____ - ____ - ____	Date of Birth: (MM/DD/YYYY) ____ / ____ / ____	Business Title (i.e., owner, partner, spouse, etc.):	

12b Print name as it appears on the social security card:

First Name:	Middle Name:	Last Name:	
Street Number:	Street Name:	Additional Address (Unit #, Suite #, Apt #, etc.):	
City:	State:	Zip Code: -	If foreign address, add Country:
Social Security Number: ____ - ____ - ____	Date of Birth: (MM/DD/YYYY) ____ / ____ / ____	Business Title (i.e., owner, partner, spouse, etc.):	

12c Print name as it appears on the social security card:

First Name:	Middle Name:	Last Name:	
Street Number:	Street Name:	Additional Address (Unit #, Suite #, Apt #, etc.):	
City:	State:	Zip Code: -	If foreign address, add Country:
Social Security Number: ____ - ____ - ____	Date of Birth: (MM/DD/YYYY) ____ / ____ / ____	Business Title (i.e., owner, partner, spouse, etc.):	

12d Print name as it appears on the social security card:

First Name:	Middle Name:	Last Name:	
Street Number:	Street Name:	Additional Address (Unit #, Suite #, Apt #, etc.):	
City:	State:	Zip Code: -	If foreign address, add Country:
Social Security Number: ____ - ____ - ____	Date of Birth: (MM/DD/YYYY) ____ / ____ / ____	Business Title (i.e., owner, partner, spouse, etc.):	

13 Has any officer, owner, partner, member, and/or manager ever had a license denied, withdrawn or suspended, or been fined for license violations (i.e. Food Stamp, WIC, business, alcohol, tobacco, lottery, or health license)? ☐ **Yes** ☐ **No**

13a If yes, provide an explanation

14 Has any officer, owner, partner, member, and/or manager ever been convicted of a crime after June 1, 1999? ☐ **Yes** ☐ **No**

14a If yes, provide an explanation

15 Do you sell products wholesale to other businesses such as hospitals or restaurants? ☐ Yes ☐ No

15a If yes, does your retail food sales meet or exceed $250,000 and 50% of your total sales? ☐ Yes ☐ No

16 Does the sale of hot and/or cold freshly prepared foods that are ready-to-eat exceed 50% of your total sales? ☐ Yes ☐ No

Total Sales. Enter the total sales from all products you sell at this location. If your store has been open under your ownership for more than one year, enter actual total sales from your most recent IRS tax return for this store (17a), or if your store has been open under your ownership for less than one year, you must provide estimated sales (17b). **You must complete either 17a or 17b.**

17a Actual Sales: This business had yearly total sales of $ _____ in tax year: _____

17b Estimated Sales: I expect to gross $ _____ in total sales per ☐ Day ☐ Week ☐ Month ☐ Year (check only one).

17c If you have an Employer Identification Number (EIN) enter it here: ☐☐-☐☐☐☐☐☐☐

18 Do you stock at least three different items in each of these food categories?

Bread/Grains	☐ Yes	☐ No	(Example: bread, cereal, pasta, rice, flour, etc.)
Dairy	☐ Yes	☐ No	(Example: milk, butter, cheese, yogurt, infant formula, etc.)
Fruits/Vegetables	☐ Yes	☐ No	(Example: corn, potatoes, green beans, apples, oranges, etc.)
Meat/Poultry/Fish	☐ Yes	☐ No	(Example: beef, chicken, pork, fish, eggs, etc.)

18a Do you stock fresh, frozen or refrigerated foods in at least two of these categories? ☐ Yes ☐ No

18b What percent of your total sales comes from these food categories? ☐ %

19 Do you sell "other" foods, such as snack foods, soft drinks, or condiments? ☐ Yes ☐ No

19a If yes, what percent of your total sales comes from these items? ☐ %

20 Do you sell non-food items or food that is hot at the time the customer pays for it? ☐ Yes ☐ No

20a If yes, check the items you carry: ☐ tobacco products ☐ alcohol ☐ lottery ☐ gasoline ☐ hot food ☐ other

20b If yes, what percent of your total sales comes from these non-food and hot food items? ☐ %

The sum of three percentage figures above must = 100 %

21 How many cash registers are at your store? ☐

22 Is your store open year round? ☐ Yes ☐ No

22a If no, check which month(s) you are open

☐ Jan ☐ Feb ☐ Mar ☐ Apr ☐ May ☐ Jun
☐ Jul ☐ Aug ☐ Sep ☐ Oct ☐ Nov ☐ Dec

23 Is this store open 7 days a week, 24 hours per day? ☐ Yes ☐ No

23a If no, indicate operating hours

	Opening Time	Select AM or PM		Closing Time	Select AM or PM	
Monday:	_____	☐	☐	_____	☐	☐
Tuesday:	_____	☐	☐	_____	☐	☐
Wednesday:	_____	☐	☐	_____	☐	☐
Thursday:	_____	☐	☐	_____	☐	☐
Friday:	_____	☐	☐	_____	☐	☐
Saturday:	_____	☐	☐	_____	☐	☐
Sunday:	_____	☐	☐	_____	☐	☐

PRIVACY ACT STATEMENT - Section 9 of the Food Stamp Act of 1977, 7 U.S.C. 2018, authorizes collection of the information on this application.

- Information is collected primarily for use by the Food and Nutrition Service in the administration of the Food Stamp Program;
- Additional disclosure of this information may be made to other Food and Nutrition Service programs and to other Federal, State or local agencies and investigative authorities (including local law enforcement agencies) when the Food Stamp Program becomes aware of a violation or possible violation of the Food Stamp Act, as explained in the next section called "Use and Disclosure";
- Section 278.1(b) of the Food Stamp Program regulations provides for the collection of the owners' Social Security Number (SSN), Employee Identification Number (EIN) and tax information;
- The use and disclosure of SSNs and EINs obtained by applicants is covered in the Social Security Act and the Internal Revenue Code. In accordance with the Social Security Act and the Internal Revenue Code, applicant social security numbers and employer identification numbers may be disclosed only to other Federal agencies authorized to have access to social security numbers and employer identification numbers and maintain these numbers in their files, and only when the Secretary of Agriculture determines that disclosure would assist in verifying and matching such information against information maintained by such other agency [42 U.S.C. 405(c)(2)(C)(iii); 26 U.S.C. 6109(f)];
- Furnishing the information on this form, including your SSN and EIN, is voluntary but failure to do so will result in denial of this application;
- The Food and Nutrition Service may provide you with an additional statement reflecting any additional uses of the information furnished on this form.

USE AND DISCLOSURE - We may use the information you give us in the following ways;

- We may disclose information to the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when the USDA is involved in a lawsuit or has an interest in litigation and it has been determined that the use of such information is relevant and necessary and the disclosure is compatible with the purpose for which the information was collected;
- In the event that the information in our system indicates a violation of the Food Stamp Act or any other Federal or State law whether civil or criminal or regulatory in nature, we may disclose the information you give us to the appropriate agency, whether Federal or State, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto;
- We may use your information, including SSNs and EINs, to collect and report on delinquent debt and may disclose the information to other Federal and State agencies, as well as private collection agencies, for purposes of claims collection actions including, but not limited to, the Treasury Department for administrative or tax offset and referral to the Department of Justice for litigation. (Note: SSNs and EINs will only be disclosed to Federal agencies authorized to possess such information);
- We may disclose your information to other Federal and State agencies to verify the information, and to assist in the administration and enforcement of the Food Stamp Act as well as other Federal and State laws. (Note: SSNs and EINs will only be disclosed to Federal agencies authorized to possess such information);
- We may disclose information to other Federal and State agencies to respond to specific requests from such Federal and State agencies for the purpose of administering the Food Stamp Act as well as other Federal and State laws;
- We may disclose information to other Federal and State agencies for the purpose of conducting computer matching programs;
- We may disclose information to private entities having contractual agreements with us for designing, developing, and operating our systems, and for verification and computer matching purposes;
- We may disclose information to State agencies that administer the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), authorized under section 17 of the Child Nutrition Act of 1966 for purposes of administering that Act and the regulations issued under that Act;
- We may disclose information to the public when a retailer has been disqualified or otherwise sanctioned for violations of the Program after the time for administrative and judicial appeals has expired. This information is limited to the name and address of the store, the owner(s) name(s) and information about the sanction itself. The purpose of such disclosure is to assist in the administration and enforcement of the Food Stamp Act and Food Stamp Program regulations.

PENALTY WARNING STATEMENT - The Food and Nutrition Service can deny or withdraw your approval to accept food stamp benefits if you provide false information or try to hide information we ask you to give us. In addition, if false information is provided or information is hidden from the Food and Nutrition Service, the owners of the firm may be liable for a $10,000 fine or imprisoned for as long as five years, or both (7 U.S.C. 2024(f) and 18 U.S.C. 1001).

CERTIFICATION AND SIGNATURE - By signing below, you are confirming your understanding of and agreement with the following:

- I am an owner of this firm;
- I have provided truthful and complete information on this form and on any documents provided to the Food and Nutrition Service;
- If I provide false information, my application may be denied or withdrawn;
- Any information I have provided or will provide may be verified and shared by the USDA with other agencies as described above;
- By my signature below, I release my tax records to the Food and Nutrition Service;
- I have received or will receive Food Stamp Program training materials. It is my responsibility to ensure that the training materials are reviewed by all of the firm's owners and all employees (whether paid or unpaid, new, full-time or part-time); and that all employees will follow the FSP regulations;
- I am aware that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal or disqualification from the Food Stamp Program; I am aware that violations of the Food Stamp Program rules can also result in State and/or local criminal prosecution and sanctions;
- I accept responsibility on behalf of the firm for violations of the Food Stamp Program regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. These include violations such as, but not limited to:
  - Trading cash for food stamp benefits (i.e. trafficking);
  - Accepting food stamp benefits as payment for ineligible items;
  - Accepting food stamp benefits as payment on credit accounts or loans;
  - Knowingly accepting food stamp benefits from people not authorized to use them;
- Disqualification from the WIC Program may result in Food Stamp Program disqualification and a disqualification from the Food Stamp Program may result in WIC Program disqualification;
- In accordance with Federal law and U.S. Department of Agriculture policy, no customer may be discriminated against on the grounds of race, color, national origin, sex, age, religion, political beliefs, or disability. Food stamp customers must be treated in the same manner as non-food stamp customers;
- Participation can be denied or withdrawn if my firm violates any laws or regulations issued by State or local agencies, including civil rights laws and their implementing regulations;
- I am responsible for reporting changes in the firm's ownership, address, type of business and operation to the Food and Nutrition Service

Food Stamp Program authorization may not be transferred to new owners, partners, or corporations. An unauthorized individual or firm accepting or redeeming food stamp benefits is subject to substantial fines and administrative sanctions.

I have read, understand and agree with the conditions of participation outlined in the Privacy Act, Use and Disclosure, Penalty Warning and Certification Statements as provided above, and agree to comply with all statutory and regulatory requirements associated with participation in the Food Stamp Program.

X _____ Signature

X _____ Print Name

_____ Date Signed

_____ Print Title

MAIL YOUR COMPLETED APPLICATION TO THE FOOD AND NUTRITION SERVICE ADDRESS FOR YOUR STATE (SEE PAGE 1 OF INSTRUCTIONS).

Instructions for Form FNS-252
Food Stamp Program Application for Stores (Revised December 2007)

General Instructions
Use Form FNS-252, Food Stamp Program Application for Stores to apply for authorization to participate in the Food Stamp Program.

These instructions should be used when submitting a paper application by mail to USDA, Food and Nutrition Service (FNS).

The information you provide on the application form will be used by FNS to determine your store's eligibility to accept and redeem Food Stamp Program benefits. If approved, your store will be issued a Food Stamp Program license.

Reminders
You must answer all of the questions on the application form, with the following exceptions:

- If the store is owned by a Sole Proprietorship, Partnership or Nonprofit Cooperative skip question 11.
- If the store is owned by a Privately Held Corporation or LLC skip question 11c.
- If the store is owned by a Public Corporation or Government Agency skip question 12.

How to Apply
You can apply online or submit a paper application by mail. Use only one method.

Apply online: Go to the USDA, FNS website at: http://www.fns.usda.gov/fsp and follow the instructions to submit an online application.

Mail: Complete Form FNS-252, attach the required documents, sign and date the application, and mail it to the FNS Field Office address for your state. The FNS Field Office address is listed on the cover letter that was mailed to you with the application. You can also find the FNS field office address for your state at: http://www.fns.usda.gov/fsp/retailers/retailer_app/default.htm

Authorization Processing Time
You must complete the application and submit all the supporting documents before FNS processes your application. An incomplete application or failure to submit documentation will result in a delay. FNS can take up to 45 days to process a completed application.

You cannot accept Food Stamp Program benefits until you are authorized and licensed by FNS.

Contact the FNS Field Office for your state to inquire about the status of an application.

Specific Instructions
Print or type your answers so they are clear and legible. Keep a copy of what you submit to FNS for your records.

Question 1 – Store Opening Date: Enter the date that the store opened for business or will open for business under your ownership. You can enter a future opening date here. If you took over a store that is already operating, enter the date you took over. FNS will review the store's eligibility and the store may be visited as part of this review. The store must be must be open under your ownership and fully stocked before it can be licensed.

Question 2 – Store Name: Enter the name your store is doing business as.

Question 3 – Chain Store Number: Enter the store number if the store is part of a chain of stores and you refer to it by a number, i.e., "Fine Foods #426". Enter only the number in this field (do not enter a pound sign).

Question 4 – Store Location Address: Enter the store location address. Do not enter a P.O. Box number here. Use the Additional Address line for the unit number, building number, stall number, etc., for addresses with multiple stores at one location.

Question 5 – Store Mailing Address: If your store has a mailing address that is different than the location address, enter it here. If you enter a P.O. Box, leave the street number and name blank.

Questions 6 – Store Telephone Number: Enter the store's telephone number, including area code.

Questions 7 - Alternate Telephone number: Enter an alternate telephone number, including area code, such as a cellular number. We may use the alternate telephone number to contact you regarding your store during a disaster situation.

Question 8 – Official Correspondence: Check the block to show if you would like to receive official correspondence via e-mail.
Question 8a: If yes, enter the e-mail address where you want to receive FSP information.

Question 9 – Special Store Type: Check this box if your store is a farmers' market or delivery route, or if you sell primarily just one type of food (i.e., bread, meat, seafood, etc).
Question 9a: If yes, check the store type that applies.

Ownership Information:
Question 10 – Ownership Type: Using the definitions below check one box that best describes the type of ownership for your store.

Privately Held Corporation: A company that has filed Articles of Incorporation, prepaid taxes and paid the required fees to the state.

Publicly Owned Corporation: A company that publicly issues stock and is owned by shareholders.

Sole Proprietorship: One person owns and is responsible for the store.

Partnership: Two or more people own and are responsible for the store.

Limited Liability Company: A company formed under state statue where members are not liable for the company.

Nonprofit Cooperative: A group of people who co-operate and share equally in the store.

Government Owned: A Federal, state or local government agency administers and/or operates the store.

Question 11 – Corporation or Government Agency Information: For Privately Held Corporations and Limited Liability Companies, enter the name and address that is on record with the State. For Publicly Owned Corporations, enter the parent corporation name and address. For Government Owned stores, enter the name and address of the responsible government agency. For Publicly Owned Corporations or Government Owned stores enter the name, telephone number and e-mail address of the contact person or the person responsible for the Food Stamp Program license.

Question 12 – Owner, Officer, Member, Shareholder Information: Do not complete this question if you indicated the ownership type is Publicly Owned Corporation or Government Owned store in question 11. For all other ownership types, you must provide information for all primary owners, partners, members and shareholders. Enter each member's information if the store is owned by a Non-profit Cooperative. In community property states (AZ, CA, ID, LA, NV, NM, TX, WA, and WI) spouse information must be entered for each person listed.
For each Owner, Partner, Officer, Member, Shareholder and Spouse: Enter the first name, middle name, and last name of each person as it appears on their Social Security Card. Enter the home address, Social Security Number and Date of Birth for each person.

If there are more than four primary owners make a copy of page 2 and enter the additional person(s) information. FNS does not collect information on more than five primary owners.

Questions 13 and 14 - License denials/violations, criminal convictions: For each question, check only one box.
Question 13a and 14a: If you answer "Yes" to either question 13 or 14 provide an explanation.

Question 15 - Wholesale Sales: Check the box to show if this store sells products to other businesses (i.e., sells to hospitals, restaurants, etc)
Question 15a: If yes, indicate if your retail food sales meet or exceed $250,000 and 50% of the store's total sales.

Question 16 – Hot and/or Cold Freshly Prepared and Ready-to-Eat Foods: Check the box to show if the sale of hot and/or cold freshly prepared ready-to-eat foods meet or exceed 50% of your total sales.

Total Sales: Enter the total sales from everything you sell at this store location. If the store has been in business for at least a year under your ownership, provide the actual sales amount for this store as reported to the IRS in question 17a. If the store has been in business under your ownership for less than a year, you may enter estimated sales for an entire year in question 17b. **You must complete either question 17a or 17b, but not both.**

17a - Actual Sales: Enter the actual total sales amount as reported to the IRS for this store and the tax year.

17b - Estimated Sales: Enter an estimated total sales amount as a daily, weekly, monthly, or yearly figure, and check only the one method that you used (daily/weekly/monthly/yearly).

Question 17c - Federal Employer Identification Number (EIN): An EIN is a nine digit number assigned by the Internal Revenue Service to businesses for tax filing and reporting purposes. If you have an EIN number enter it exactly as assigned.

Question 18 – Food Inventory: For each of the food categories listed check the block to show whether or not your store stocks at least three different types of food items in each category on a daily basis. For example, eggs, milk and yogurt are different types of food; whole milk, skim milk and chocolate milk are not.
Question 18a – Perishables: Check the box that applies if you stock foods that are fresh, refrigerated or frozen in at least two of the food categories listed in question 18.
Question 18b – Sales Percent: Enter the percent of your total sales that comes from the sale of these food items.

Question 19 – Other Foods: Check the box to show if you sell other foods such as snack foods, soft drinks and/or condiments.
Question 19a: If yes, enter the percent of your total sales that come from the sale of these food items.

Question 20 – Non-Food/Hot Food: Check the box to show if you sell any non-food items or food that is hot when the customer pays for it.
Question 20a: If yes, check the boxes to show which items you sell.
Question 20b: Enter the percent of your total sales that comes from the sale of non-food items and hot foods.

*** The sum of 18b, 19a and 20b must equal 100 percent.**

Supplemental Information:
Question 21 – Number of Cash Registers: Enter the number of cash registers at this store.
Hours of Operation
Question 22 – Store Open Year Round: Check the box to show if your store is open year-round.
Question 22a: If no, check the boxes next to the months your store is open for business.

Question 23 – Open 24/7: Check the box to show if your store is open 24 hours a day, 7 days a week.
Question 23a: If no, enter the opening and closing time for each day your store is open for business and indicate AM or PM.

Privacy Act and Paperwork Reduction Notice. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0584-0008. The time required to complete this information collection is estimated to average 15.04 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

If you have comments regarding the accuracy of the time estimate(s) or suggestions you can write to the Food and Nutrition Service, BRD, Room 400, 3101 Park Center Dr., Alexandria, VA 22302. Do not send the completed application form to this address. Instead, see *How to Apply* on page 1.

To file a complaint of Discrimination, write to the USDA, Director, Office of Civil Rights, Room 326W Whitten Building, 1400 Independence Ave, SW, Washington, D.C. 20250-9410. Do not send the completed application form to this address.

[FR Doc. 07–6255 Filed 12–31–07; 8:45 am]
BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Report of Disaster Food Stamp Program Benefit Issuance and Report of Commodity Distribution for Disaster Relief

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. The proposed collection is a revision of a collection currently approved for the Food Stamp Program and the Food Distribution Program and revises the collection into two reports that provide information specific to each program.

DATES: Written comments must be received on or before March 3, 2008.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Brenda Lisi, Director, Office of Emergency Management and Food Safety, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 910, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Brenda Lisi at 703–305–2908 or via e-mail to *Brenda.lisi@fns.usda.gov.*

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 910.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Brenda Lisi, (703) 305–2041.

SUPPLEMENTARY INFORMATION:

Title: Report of Food Stamp Benefit Issuances and Commodity Distribution for Disaster Relief.

OMB Number: 0584–0037.

Form Number: FNS 292–A and 292–B.

Expiration Date: 04/30/2008.

Type of Request: Revision of currently approved collection.

Abstract: Food assistance in disaster situations is authorized under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c); section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431); section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a–1); section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note); and by sections 412 and 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179, 5180). Program implementing regulations are contained in 7 CFR part 250. In accordance with 7 CFR 250.43(f), distributing agencies shall provide a summary report to the agency within 45 days following termination of the disaster assistance. FNS proposes to divide the disaster relief reporting into two separate forms, FNS 292–A, ''Report of Commodity Distribution for Disaster Relief,'' and FNS–292–B, ''Report of Food Stamp Issuance for Disaster Relief.'' The separate forms will allow State Agencies to report on the specific disaster relief provided in the detail required by FNS and in a more user-friendly format.

Affected Public: State agencies that administer FNS disaster food relief activities.

Estimated Number of Respondents: 55.

Number of Responses per Respondent: The number of responses is estimated to be 1 response per State agency per year per form.

Estimated Time per Response: Public reporting burden for this collection of information is estimated to average 25 minutes per respondent per response.

Estimated Total Annual Burden: 46.2 hours.

Dated: December 19, 2007.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E7–25464 Filed 12–31–07; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of upcoming Sunset Reviews.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for February 2008

The following Sunset Reviews are scheduled for initiation in February 2008 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

	Department Contact
Antidumping Duty Proceedings	
Silicon Metal from Russia (A–821–817).	Dana Mermelstein, (202) 482–1391.
Steel Concrete Reinforcing Bars from Turkey (A–489–807)—(2nd Review).	Brandon Farlander, (202) 482–0182.
Countervailing Duty Proceedings	
No Sunset Review of countervailing duty proceedings are scheduled for initiation in February 2008.	
Suspended Investigations	
No Sunset Review of suspended investigations are scheduled for initiation in February 2008.	

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the

Department's Policy Bulletin 98.3—Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 15 days of the publication of the Notice of Initition.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 19, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–25502 Filed 12–31–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2004) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of January 2008,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period
Antidumping Duty Proceedings	
BRAZIL: Prestressed Concrete Steel Wire Strand, A–351–837	1/1/07–12/31/07
INDIA: Prestressed Concrete Steel Wire Strand, A–533–828	1/1/07–12/31/07
MEXICO: Prestressed Concrete Steel Wire Strand, A–201–831	1/1/07–12/31/07
SOUTH AFRICA: Ferrovanadium, A–791–815	1/1/07–12/31/07
SOUTH KOREA:	
Prestressed Concrete Steel Wire Strand, A–580–852	1/1/07–12/31/07
Top-of-the Stove Stainless Steel Cooking Ware, A–580–601	1/1/07–12/31/07
THAILAND: Prestressed Concrete Steel Wire Strand, A–549–820	1/1/07–12/31/07
THE PEOPLE'S REPUBLIC OF CHINA:	
Crepe Paper Products, A–570–895	1/1/07–12/31/07
Ferrovanadium, A–570–873	1/1/07–12/31/07
Folding Gift Boxes, A–570–866	1/1/07–12/31/07
Potassium Permanganate, A–570–001	1/1/07–12/31/07
Wooden Bedroom Furniture, A–570–890	1/1/07–12/31/07
Countervailing Duty Proceedings	
SOUTH KOREA: Top-of-the-Stove Stainless Steel Cooking Ware, C–580–602	1/1/07–12/31/07
Suspension Agreements	
RUSSIA: Certain Cut-to-Length Carbon Steel Plate, A–821–808	1/1/07–12/31/07

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department changed its requirements for requesting reviews for countervailing duty orders. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of January 2008. If the Department does not receive, by the last day of January 2008, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered. This notice is not required by statute but is published as a service to the international trading community.

Dated: December 19, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–25501 Filed 12–31–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on chlorinated isocyanurates (''chlorinated isos'') from the People's Republic of China (''PRC'') covering the period December 16, 2004, through May 31, 2006. We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we have made changes to our margin calculations. Therefore, the final results differ from the preliminary results.

EFFECTIVE DATE: January 2, 2008.

FOR FURTHER INFORMATION CONTACT: Katharine Huang or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1271 or (202) 482–0650, respectively.

Background

On July 17, 2007, the Department published its preliminary results of the antidumping duty order on chlorinated isocyanurates from the PRC. *See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 39053 (July 17, 2007) (''*Preliminary Results*''). On August 7, 2007, Clearon Corporation (''Clearon'') and Occidental Chemical Corporation (''Petitioners''), petitioners in the underlying investigation, provided additional information on the appropriate surrogate values to use as a means of valuing the factors of production. On the same date, Petitioners and BioLab, Inc. (''BioLab''), a domestic producer of the like product, requested an extension of the briefing schedule. On August 15, 2007, we granted this request to all interested parties. On August 16, 2007, the Department received a request for a hearing from BioLab. On September 7, 2007, the Department received case briefs from Petitioners and BioLab, and from respondent Hebei Jiheng Chemical Company Ltd. (''Jiheng Chemical''). On September 13, 2007, the Department received rebuttal briefs from Petitioners, BioLab and Jiheng Chemical. On September 27, 2007, the Department held public and closed hearings. On October 24, 2007, Department officials met with counsel for Petitioners. On November 1, 2007, Department officials met with counsel for Jiheng Chemical. On November 13, 2007, Department officials met with counsel for BioLab. On November 14, 2007, the Department extended the time period for completion of the final results until December 14, 2007. *See Chlorinated Isocyanurates from the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 72 FR 65563 (November 21, 2007).

We have conducted this administrative review in accordance with section 751 of the Tariff act of 1930, as amended (''the Act'') and 19 CFR 351.213.

Scope of the Order

The products covered by this order are chlorinated isocyanurates, as described below: Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s–triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3 \bullet 2H_2O$), and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isocyanurates are available in powder, granular, and tableted forms. This order covers all chlorinated isocyanurates.

Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.50, 3808.50.40 and 3808.94.50.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isocyanurates and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the

written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the post–preliminary comments by parties in this review are addressed in the memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the 2004–2006 Administrative Review of Chlorinated Isocyanurates from the People's Republic of China'' (December 14, 2007) (''Issues and Decision Memorandum''), which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU'') in room B–099 in the main Commerce Department building, and is also accessible on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for Jiheng Chemical. *See* Issues and Decision Memorandum, at Comments 1–18.

- We revised the calculation of normal value (''NV'') to eliminate Jiheng Chemical's by–product credits for discharged chlorine gas, hydrogen gas, sulfuric acid and ammonia gas. *See* Comment 15.
- We revised the calculation of international ocean freight to include the relevant itemized charges. *See* Comment 8.
- We revised the calculation of surrogate financial ratios using only financial statements for Kanoria Chemicals & Industries Limited. *See* Comment 10.
- We corrected errors in calculating U.S. Net price. *See* Comments 16 and 17.

Final Results of Review

We determined that the following dumping margins exist for the period December 16, 2004, through May 31, 2006.

Exporter/Manufacturer	Weighted–Average Margin Percentage
Jiheng Chemical	18.44

Assessment Rates

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (''CBP'') 15 days after the date of publication of these final results of review. In accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific assessment rates for merchandise subject to this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Jiheng Chemical, the cash deposit rate will be 18.44 percent; (2) for previously reviewed or investigated exporters not listed above that have separate rates, the cash–deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash–deposit rate will be the PRC–wide rate of 285.63 percent; and (4) for all non–PRC exporters of subject merchandise that have not received their own rate, the cash–deposit rate will be the rate applicable to the PRC exporter that supplied that non–PRC exporter. These deposit requirements shall remain in effect until further notice.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties. This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a) and 777(i) of the Act.

Dated: December 14, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Issues and Decision Memorandum

Surrogate Values

Comment 1: Surrogate Value for Urea
Comment 2: Surrogate Value for Sodium Chloride (Salt)
Comment 3: Surrogate Value for Ferric Trichloride
Comment 4: Surrogate Value for Water
Comment 5: Surrogate Value for Desiccant
Comment 6: Surrogate Value for Electricity
Comment 7: Surrogate Value for Steam Coal
Comment 8: Surrogate Value for International Ocean Freight
Comment 9: Surrogate Values from *Chemical Weekly*

Financial Ratios

Comment 10: Eligibility of DCM as Source for Surrogate Financial Ratios
Comment 11: DCM's Expenses for Traded Goods in the Financial Ratio Calculation
Comment 12: Applying Income Offsets in Calculating Financial Ratios
Comment 13: Changes in Stock for DCM and Kanoria's Cost of Materials Calculations
Comment 14: Use of Net Cost in Financial Ratio Calculations

By–Products

Comment 15: Intermediate Input By–Product Offsets for Chlorine Gas, Hydrogen Gas, Sulfuric Acid and Ammonia Gas
A. Chlorine Gas
B. Hydrogen Gas
C. Waste Sulfuric Acid
D. Ammonia Gas

Other Issues

Comment 16: Inclusion of Reimbursement for Certain Materials in U.S. Price
Comment 17: Correct Treatment of a Raw Material not Provided Free of Charge

Comment 18: Zeroing Methodology

[FR Doc. E7–25498 Filed 12–31–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic from the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 2, 2008.

SUMMARY: The Department of Commerce (''Department'') has determined that three requests for new shipper reviews (''NSRs'') of the antidumping duty order on fresh garlic from the People's Republic of China (''PRC''), received on November 20 and November 30, 2007, respectively, meet the statutory and regulatory requirements for initiation. The period of review (''POR'') for the three NSRs which the Department is initiating is November 1, 2006, through October 31, 2007.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on fresh garlic from the PRC was published in the **Federal Register** on November 16, 1994. *See Notice of Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 59 FR 59209 (November 16, 1994) (''Order'').[1] On November 20 and November 30, 2007, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(c), the Department received three new shipper review (''NSR'') requests from Anqiu Haoshun Trade Co., Ltd., (''Haoshun''), Ningjin Ruifeng Foodstuff Co., Ltd. (''Ningjin''), and Zhengzhou Yuanli Trading Co., Ltd. (''Yuanli''), respectively. All three companies certified that they are both the producer and exporter of the subject merchandise upon which the requests for NSRs were based.

On December 4, 2007, the Department documented a phone call to Haoshun's consultant regarding the erroneous POR identified in the caption of Haoshun's NSR request. On December 5, 2007, the Department issued a letter to Haoshun requesting further information that was not contained within its NSR request. On December 10, 2007, Haoshun submitted certifications, pursuant to 19 CFR 351.214(b)(2)(ii)(B) and a correction to the POR indicated in the caption of its request.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Haoshun, Ningjin, and Yuanli certified that they did not export fresh garlic to the United States during the period of investigation (''POI''). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Haoshun, Ningjin, and Yuanli certified that, since the initiation of the investigation, they have never been affiliated with any PRC exporter or producer who exported fresh garlic to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Haoshun, Ningjin, and Yuanli also certified that their export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Haoshun, Ningjin, and Yuanli submitted documentation establishing the following: (1) the date on which Haoshun, Ningjin, and Yuanli first shipped fresh garlic for export to the United States and the date on which the fresh garlic was first entered, or withdrawn from warehouse, for consumption; (2) the volume of their first shipment;[2] and (3) the date of their first sale to an unaffiliated customer in the United States.

The Department conducted CBP database queries in an attempt to confirm that Haoshun, Ningjin, and Yuanli's shipments of subject merchandise had entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties. The Department also examined whether the CBP data confirmed that such entries were made during the NSR POR.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), the Department finds that Haoshun, Ningjin, and Yuanli meet the threshold requirements for initiation of a NSR for the shipment of fresh garlic from the PRC they produced and exported. *See Memorandum to File from Irene Gorelik, Senior Analyst, through Alex Villanueva, Program Manager, Office 9, Initiation of AD New Shipper Review: Fresh Garlic from the People's Republic of China (A–570–831)*, (December xx, 2007) (''*NSR Initiation Memo*'').

The POR for the three NSRs is November 1, 2006, through October 31, 2007. *See* 19 CFR 351.214(g)(1)(i)(A). The Department intends to issue the preliminary results of these reviews no later than 180 days from the date of initiation, and final results of these reviews no later than 270 days from the date of initiation. *See* section 751(a)(2)(B)(iv) of the Act.

On August 17, 2006, the Pension Protection Act of 2006 (''H.R. 4'') was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct CBP to collect a bond or other security in lieu of a cash deposit in new shipper reviews. Therefore, the posting of a bond under section 751(a)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of fresh garlic from the PRC manufactured and/or exported by Haoshun, Ningjin, and Yuanli must continue to post cash deposits of estimated antidumping duties on each entry of subject merchandise at the current PRC–wide rate of 376.67 percent.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

December 21, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–25499 Filed 12–31–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE26

Endangered and Threatened Species; Recovery Plans

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

[1] Therefore, a request for a NSR based on the annual anniversary month, November, was due to the Department by the final day of November 2007. See 19 CFR 351.214(d)(1).

[2] Haoshun, Ningjin, and Yuanli made no subsequent shipments to the United States.

Atmospheric Administration, Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the availability of the Proposed Columbia River Estuary Endangered Species Act (ESA) Recovery Plan Module for Salmon and Steelhead (Estuary Module) for public review and comment. The Estuary Module was developed to meet the estuary recovery needs of all ESA-listed salmon and steelhead in the Columbia River Basin. The Estuary Module will be incorporated by reference into all Columbia Basin salmon and steelhead recovery plans to guide salmon and steelhead recovery in the Columbia River estuary. The Estuary Module was prepared by the Lower Columbia River Estuary Partnership, under contract to NMFS. At this time, NMFS is soliciting review and comment from the public and all interested parties on the proposed Estuary Module.

DATES: NMFS will consider and address all substantive comments received during the comment period. Comments must be received no later than 5 p.m. Pacific Daylight Time on March 3, 2008.

ADDRESSES: Please send written comments and materials to Patty Dornbusch, National Marine Fisheries Service, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232. Comments may also be submitted by e-mail to: *EstuaryPlan.nwr@noaa.gov*. Include in the subject line of the e-mail comment the following identifier: Comment on Columbia River Estuary Recovery Plan Module. Comments may be submitted via facsimile (fax) to (503) 872–2737.

Persons wishing to review the Estuary Module may obtain an electronic copy (i.e., CD-ROM) by calling Sharon Houghton at (503) 230–5418 or by emailing a request to *sharon.houghton@noaa.gov*, with the subject line ''CD-ROM Request for Columbia River Estuary Module.'' Electronic copies of the Estuary Module are also available online on the NMFS website: *www.nwr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Patty Dornbusch, NMFS Lower Columbia Recovery Coordinator (503–230–5430), or Elizabeth Gaar, NMFS Salmon Recovery Division (503–230–5434).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. *et seq.*), requires that a recovery plan be developed and implemented for species listed as endangered or threatened under the statute, unless such a plan would not promote the recovery of a species. Recovery plans must contain (1) objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. NMFS is the agency responsible for developing recovery plans for salmon and steelhead, and the agency will use the plans to guide efforts to restore endangered and threatened Pacific salmon and steelhead to the point that they are again self sustaining in their ecosystems and no longer need the protections of the ESA.

To accomplish recovery planning in the Columbia River Basin, NMFS organized the eight listed salmon evolutionarily significant units (ESUs) and the five listed steelhead distinct population segments (DPSs) into two geographic recovery domains, the Lower Columbia/Willamette and the Interior Columbia. (The latter was further divided into the Snake, Mid-Columbia, and Upper Columbia sub-domains.) Recovery plans are either complete or in development to address all listed salmon ESUs or steelhead DPSs within each domain.

Because NMFS believes that local support for recovery plans is essential, the agency has approached recovery planning collaboratively, with strong reliance on existing state, regional, and tribal planning processes. For instance, in the Columbia Basin, recovery plans have been or are being developed by regional recovery boards convened by Washington State, by the State of Oregon in conjunction with stakeholder teams, and by NMFS in Idaho with the participation of local agencies. NMFS reviews locally developed recovery plans, ensures that they satisfy ESA requirements, and makes them available for public review and comment before formally adopting them as ESA recovery plans.

Recovery plans must consider the factors affecting species survival throughout the entire life-cycle. The salmonid life cycle includes spawning and rearing in the tributaries, migration through the mainstem Columbia River and estuary to the ocean, and the return journey to the natal stream. In the estuary, juvenile and adult salmon and steelhead undergo physiological changes needed to make the transition to and from saltwater. They use the varying sub-habitats of the estuary - the shallows, side channels, deeper channels, and plume of freshwater extending offshore - at varying times of the year. While local recovery planners appropriately focus on the tributary conditions within their jurisdictions and domains, NMFS recognized the need for consistent treatment of the factors in the estuary that affect all of the listed salmonids in the Columbia Basin.

The Estuary Module is intended to address limiting factors, threats, and needed actions in the Columbia River estuary for the 13 ESUs and DPSs of salmon and steelhead listed in the basin. Each locally developed recovery plan will then include or incorporate by reference the Estuary Module as its estuary component. This approach will ensure consistent treatment across locally developed recovery plans of the effects of the Columbia River estuary as well as a system-wide approach to evaluating and implementing estuary recovery actions. The planning area of the Estuary Module overlaps to some extent with the planning areas for locally developed plans for lower Columbia River tributaries. This overlap occurs in the tidally influenced portions of the tributaries, and in such instances the local plans will reflect the Estuary Module but may contain a higher level of detail in terms of specificity of actions.

NMFS contracted with the Lower Columbia River Estuary Partnership (LCREP) for development of the Estuary Module. LCREP was established in 1995 as part of the Environmental Protection Agency's National Estuary Program. LCREP's major roles are to convene common interests, help integrate conservation efforts, increase public awareness and involvement, and promote information-based problem-solving. LCREP is the primary organization focused on conserving and improving the environment of the Columbia River estuary. In addition to having completed development, and begun implementation, of its Comprehensive Conservation and Management Plan in 1999, LCREP completed the Mainstem Lower Columbia River and Columbia River Estuary Subbasin Plan and Supplement in 2004. The LCREP's expertise in assessment, planning, and stakeholder connections made it uniquely suited to develop this proposed Estuary Module for NMFS.

NMFS has reviewed the Estuary Module and is now making it available for public review and comment.

Upon approval of the Estuary Module, NMFS will make a commitment to implement the actions in the Estuary

Module for which it has authority, to work cooperatively on implementation of other actions, and to encourage other Federal agencies to implement Estuary Module actions for which they have responsibility and authority. NMFS will also encourage the States of Washington and Oregon to seek similar implementation commitments from state agencies and local governments.

NMFS expects the Estuary Module to help NMFS and other Federal agencies take a more consistent approach to future section 7 consultations and other ESA decisions. For example, the Estuary Module will provide greater biological context for the effects that a proposed action may have on a listed ESU or DPS. Science summarized in the Estuary Module will become a component of the ''best available information'' for section 7 consultations as well as for section 10 habitat conservation plans and other ESA decisions.

The Estuary Module

The purpose of the Estuary Module is to identify and prioritize management actions that, if implemented, would reduce the impacts of the limiting factors that salmon and steelhead encounter during migration and rearing in the estuary and plume ecosystems. To accomplish this, changes in the physical, biological, or chemical conditions in the estuary are reviewed for their potential to affect salmon and steelhead. Then, the underlying causes of limiting factors are identified and prioritized based on the significance of the limiting factor and each cause's contribution to one or more limiting factors. These causes are referred to as threats and can be either human or environmental in origin. Finally, management actions are identified that are intended to reduce the threats and increase the survival of salmon and steelhead during estuarine rearing and migration. Costs are developed for each of the actions using an estimated level of effort for implementation.

The Estuary Module is a synthesis of diverse literature sources and the direct input of estuary scientists. The following key documents were used extensively as a platform for the Estuary Module: Mainstem Lower Columbia River and Columbia River Estuary Subbasin Plan and Supplement (Northwest Power and Conservation Council, 2004); Salmon at River's End (Bottom et al., 2005) and Role of the Estuary in the Recovery of Columbia River Basin Salmon and Steelhead (Fresh et al., 2005). Many primary sources were also consulted, including experts from the NMFS Northwest Fisheries Science Center, other NMFS staff, LCREP staff, and Lower Columbia Fish Recovery Board staff. Additionally, modifications to the Estuary Module were influenced by interactions with the Northwest Power and Conservation Council, the Mid-Columbia Sounding Board, the Upper Willamette Stakeholder Team, and the Lower Columbia River Stakeholder Team.

Planning Area and ESUs and DPSs Addressed

For the purposes of the Estuary Module, the estuary is broadly defined to include the entire continuum where tidal forces and river flows interact, regardless of the extent of saltwater intrusion (Fresh et al. 2005; Northwest Power and Conservation Council 2004). For planning purposes, the upstream boundary is Bonneville Dam and the downstream boundary includes the Columbia River plume. These two divisions-the estuary and plume-were used extensively in the Estuary Module.

During their life cycles, all listed salmon and steelhead in the Columbia River basin rely for some period of time on the Columbia River estuary. The Estuary Module is therefore intended to address all eight listed ESUs and all five listed DPSs.

Recovery Goals, Objectives, and Criteria

Because the Estuary Module addresses only a portion of the species life-cycle and is intended to be incorporated into locally developed recovery plans that will be adopted by NMFS as ESA recovery plans, it does not contain recovery goals and objectives or de-listing criteria. Those will be provided in the domain-specific recovery plans that this Estuary Module is intended to complement.

Causes for Decline and Current Threats

The estuary and plume are considerably degraded from their historical condition. The Estuary Module identifies these changes, evaluates their potential effects on salmon and steelhead, and discusses their underlying causes. The causes of decline and current threats may be broadly categorized as habitat-related threats, threats related to the food web and species interaction, and other threats.

Habitat: The estuary is about 20 percent smaller than it was historically (Northwest Power and Conservation Council, 2004). This reduction is due mostly to diking and filling practices used to convert the floodplain to agricultural, industrial, commercial, and residential uses. Flows entering the estuary also have changed dramatically: spring freshets have decreased and other aspects of the historical hydrograph have been altered. These changes are the result of flow regulation by the hydropower system, water withdrawal for irrigation and water supplies, and climate fluctuations.

Flow alterations and diking and filling practices have affected salmon and steelhead in several ways. Access to and use of floodplain habitats by ocean-type ESUs (salmonids that typically rear for a shorter time in tributaries and a longer time in the estuary) have been severely compromised through alterations in the presence and availability of these important habitats. Shifts in timing, magnitude, and duration of flows have also changed erosion and accretion processes, resulting in changes to in-channel habitat availability and connectivity.

Elevated temperatures of water entering the estuary are also a threat to salmon and steelhead. Degradation of tributary riparian habitat by land-use practices, in addition to reservoir heating, has caused these increased temperatures. Water quality in the estuary and plume has also been degraded by toxic contaminants. Many contaminants are found in the estuary and plume, some from agricultural pesticides and fertilizers and some from industrial sources. Salmon and steelhead are affected by contaminants through short-term exposure to lethal substances or through longer exposures to chemicals that accumulate over time and magnify through the food chain.

Food Web and Species Interactions: Limiting factors related to the food web and species interactions can be thought of as the product of all the threats to salmon and steelhead in the estuary. Examples include relatively recent increases in Caspian tern and pinniped predation on salmonids, due at least in part to human alterations of the ecosystem, as well as the more complex and less understood shift from macrodetritus-based primary plant production to phytoplankton production. The introduction of exotic species is another ecosystem alteration whose impacts are not clearly understood.

Other Threats: The estuary is also influenced by thousands of over-water and instream structures, such as jetties, pilings, pile dikes, rafts, docks, breakwaters, bulkheads, revetments, groins, and ramps. These structures alter river circulation patterns, sediment deposition, and light penetration, and they form microhabitats that often benefit predators. In some cases, structures reduce juvenile access to low-velocity habitats. Ship wake stranding is

an example of another threat to salmon and steelhead in the estuary whose full impact is not well understood.

Recovery Strategies and Actions

The Estuary Module identifies 23 management actions to improve the survival of salmon and steelhead migrating through and rearing in the estuary and plume environments. Table 1 identifies these management actions and shows their relationship to threats to salmonid survival.

TABLE 1 MANAGEMENT ACTIONS TO ADDRESS THREATS

	Threat	Management Action
Flow-related threats	Climate cycles and global warming[2]	**CRE[1]–1:** Protect intact riparian areas in the estuary and restore riparian areas that are degraded.[2]
		CRE–2: Modify hydrosystem operations to reduce the effects of reservoir surface heating, or conduct mitigation measures.[2]
		CRE–3: Establish legal instream flows for the estuary that would help prevent further degradation of the ecosystem.[2]
	Water withdrawal	**CRE–3:** Establish legal instream flows for the estuary that would help prevent further degradation of the ecosystem.
	Flow regulation	**CRE–4:** Adjust the timing, magnitude and frequency of flows (especially spring freshets) entering the estuary and plume to provide better transport of sediments and access to habitats in the estuary, plume, and littoral cell.
Sediment-related threats	Entrapment of sediment in reservoirs	**CRE–5:** Study and mitigate the effects of entrapment of sediment in reservoirs, to improve nourishment of the littoral cell.
	Impaired sediment transport	**CRE–6:** Reduce the export of sand and gravels via dredge operations by using dredged materials beneficially.
		CRE–4: Adjust the timing, magnitude and frequency of flows (especially spring freshets) entering the estuary and plume to provide better transport of sediments and access to habitats in the estuary, plume, and littoral cell.
	Dredging	**CRE–7:** Reduce entrainment and habitat effects resulting from main- and side-channel dredge activities in the estuary.
Structural threats	Pilings and pile dikes	**CRE–8:** Remove pile dikes that have low navigational value but high impact on estuary circulation and/or juvenile predation effects.
	Dikes and filling	**CRE–9:** Protect remaining high-quality off-channel habitat from degradation through education, regulation, and fee simple and less-than-fee acquisition.
		CRE–10: Breach or lower dikes and levees to improve access to off-channel habitats.
	Reservoir heating	**CRE–2:** Modify hydrosystem operations to reduce the effects of reservoir surface heating, or conduct mitigation measures.

TABLE 1 MANAGEMENT ACTIONS TO ADDRESS THREATS—Continued

	Threat	Management Action
	Over-water structures	**CRE–11:** Reduce the square footage of over-water structures in the estuary.
Food web-related threats	Reservoir phytoplankton production	CRE–10: Breach or lower dikes and levees to improve access to off-channel habitats.
	Altered predator/prey relationships	CRE–13: Manage pikeminnow, smallmouth bass, walleye, and channel catfish to prevent increases in abundance.
		CRE–14: Identify and implement actions to reduce salmonid predation by pinnipeds.
		CRE–15: Implement education and monitoring projects and enforce existing laws to reduce the introduction and spread of noxious weeds.
		CRE–16: Implement projects to redistribute part of the Caspian tern colony currently nesting on East Sand Island.

TABLE 1 MANAGEMENT ACTIONS TO ADDRESS THREATS—Continued

	Threat	Management Action
		CRE–17: Implement projects to reduce double-crested cormorant habitats and encourage dispersal to other locations.
		CRE–18: Reduce the abundance of shad entering the estuary.
	Ship ballast practices	**CRE–19:** Prevent new invertebrate introductions and reduce the effects of existing infestations.
Water quality-related threats	Agricultural practices	**CRE–20:** Implement pesticide and fertilizer best management practices to reduce estuary and upstream sources of toxic contaminants entering the estuary.
	Urban and industrial practices	**CRE–21:** Identify and reduce industrial, commercial, and public sources of pollutants.
		CRE–22: Monitor the estuary for contaminants and/or restore contaminated sites.

TABLE 1 MANAGEMENT ACTIONS TO ADDRESS THREATS—Continued

	Threat	Management Action
		CRE–23: Implement stormwater best management practices in cities and towns.
		CRE–1: Protect intact riparian areas in the estuary and restore riparian areas that are degraded.
Other threats	Riparian practices	**CRE–1:** Protect intact riparian areas in the estuary and restore riparian areas that are degraded.
	Ship wakes	**CRE–12:** Reduce the effects of vessel wake stranding in the estuary.

[1]CRE = Columbia River estuary.

[2]It is unclear what the regional effects of climate cycles and global warming will be during the coming decades. In the absence of unambiguous data on the future effects of climate cycles and global warming in the Pacific Northwest, this recovery plan module takes a conservative approach of assuming reduced snowpacks, groundwater recharge, and stream flows, with associated rises in stream temperature and demand for water supplies. The climate-related management actions in this table reflect this assumption.

Identifying management actions that could reduce threats to salmon and steelhead as they rear in or migrate through the estuary is an important step toward improving conditions for salmonids during a critical stage in their life cycles. However, actual implementation of management actions is constrained by a variety of factors, such as technical, economic, and property rights considerations. In fact, in some cases it will be impossible to realize an action's full potential because its implementation is constrained by past societal decisions that are functionally irreversible. An important assumption of the Estuary Module is that the implementation of each of the 23 management actions is constrained in some manner.

The Estuary Module makes another important assumption about implementation: although implementation of actions is constrained, even constrained implementation can make important contributions to the survival of salmonids in the estuary, plume, and nearshore.

It is within the context of these two fundamental assumptions that recovery actions are evaluated in the Estuary Module, in terms of their costs and potential benefits.

Potential Survival Benefits and Time and Cost Estimates

The evaluation of survival benefits and costs is highly uncertain because it relies on estimates not only of what is technically feasible, but also of what is socially and politically practical. To help characterize potential survival improvements, the Estuary Module uses a planning exercise that involves distributing a plausible survival-improvement target of 20 percent across the actions to hypothesize the portion of that total survival-improvement target that might result from each action. The primary purpose of the survival-improvement target is to help compare the relative potential benefits of different management actions. The survival-improvement target does not account for variation at the ESU, population, and subpopulation scales, and is not intended for use in life-cycle modeling, except as a starting point in the absence of more rigorous data.

Costs are developed by breaking each action into a number of specific projects or units and identifying per-unit costs for each project. Both the survival improvements and costs reflect assumptions about the constraints to implementation and the degree to which those constraints can be reduced given the technical, social, and political context in the Columbia River basin.

The Estuary Module estimates that the cost of partial (constrained) implementation of all 23 actions over a 25-year time period is about $500 million. Costs of tributary actions and the total estimated time and cost of recovery for each affected ESU or DPS will be provided in the locally developed recovery plans.

Monitoring and Adaptive Management

As discussed in chapter 6 of the Estuary Module, several important monitoring and adaptive management activities are occurring throughout the Columbia River Basin that have a direct bearing on the estuary, plume, and nearshore. While NMFS believes that these activities provide an adequate framework for monitoring in the estuary, there remains a need to ensure consistency of existing monitoring and evaluation programs in the estuary with the NMFS document Adaptive Management for Salmon Recovery: Evaluation Framework and Monitoring Guidance (*www.nwr.noaa.gov/Salmon-Recovery-Planning/ESA-Recovery-Plans/Other-Documents.cfm*) and to review and evaluate pertinent monitoring programs to identify additional monitoring needs (including indicators, metrics, and protocols; lead entities; costs), particularly in the area of action effectiveness monitoring for the actions identified in the Estuary Module. This work is underway and expected to be incorporated into chapter 6 or as an appendix of the Estuary Module at the time it is finalized.

Conclusion

The Estuary Module contributes to all the Columbia Basin salmon and steelhead recovery plans by analyzing limiting factors and threats relating to survival of listed salmonid species in their passage or residence time in the Columbia River estuary, site-specific management actions related to those limiting factors and threats, and estimates of cost, to be incorporated by reference into all the basin recovery plans. NMFS concludes that the Estuary Module provides information that helps to meets the requirements for recovery plans under ESA section 4(f), and thus is proposing it as a component of Columbia Basin ESA recovery plans.

Literature Cited

Lower Columbia River Estuary Partnership. 1999. Lower Columbia River Estuary Plan (Comprehensive Conservation and Management Plan).

Northwest Power and Conservation Council. 2004. Mainstem Lower Columbia River and Columbia River Estuary Subbasin Plan and Supplement. (Adopted into the Columbia River Basin Fish and Wildlife Program).

Bottom, D.L., C.A. Simenstad, J. Burke, A.M. Baptista, D.A. Jay, K.K. Jones, E. Casillas, and M. H. Schiewe. 2005. Salmon at River's End: The Role of the Estuary in the Decline and Recovery of Columbia River Salmon. U.S. Dept. Commer., NOAA Tech. Memo. NMFS-NWFSC–68, 246p.

Fresh, K.L., E. Casillas, L.L. Johnson, and D.L. Bottom. 2005. Role of the Estuary in the Recovery of Columbia River Basin Salmon and Steelhead: An Evaluation of the Effects of Selected Factors on Salmonid Population Viability. U.S. Dept. Commer., NOAA Tech. Memo. NMFS-NWFSC–69, 105p.

Public Comments Solicited

NMFS solicits written comments on the proposed Estuary Module as a component of Columbia Basin ESA recovery plans. All comments received by the date specified above will be considered prior to NMFS's decision whether to adopt the Estuary Module. Additionally, NMFS will provide a summary of the comments and responses through its regional web site. NMFS seeks comments particularly in the following areas: (1) survival improvement targets and allocation of benefits among actions; (2) costs and schedule for implementing management actions; (3) strategies for monitoring action effectiveness; (4) oversight and institutional infrastructure needed for implementation of Estuary Module actions.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 26, 2007.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–25401 Filed 12–31–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XE76

Gulf of Mexico Fishery Management Council (Council); Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held January 28, 2008 through January 31, 2008.

ADDRESSES: The meetings will be held at the Radisson Hotel & Conference Center, 12600 Roosevelt Blvd., St. Petersburg, FL 33716.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Council

Wednesday, January 30, 2008

11 a.m. - The Council meeting will begin with a review of the agenda and minutes.

11:15 a.m. - 11:30 a.m., the Council will appoint Council Committees.

1 p.m. - 1:30 p.m., NMFS will present the National Bycatch Report.

1:30 p.m. - 4:30 p.m., the Council will receive public testimony on: (1) exempted fishing permits (EFPs), if any; (2) Reef Fish Amendment 30A; (3) Generic Aquaculture Amendment; and (4) Spiny Lobster Scoping Document.

4:30 p.m. - 5:30 p.m., an Open Public Comment Period regarding any fishery issue of concern will be held. People wishing to speak before the Council should complete a public comment card prior to the comment period.

5:30 - 6 p.m., a CLOSED SESSION on Personnel will be held.

Thursday, January 31, 2008

The Council will review and discuss reports from the previous two days' committee meetings as follows:

8:30 a.m. - 10:30 a.m. - Reef Fish Management;

10:30 a.m. - 10:45 a.m. - Joint Reef Fish/Mackerel/Red Drum;

10:45 a.m. - 11 a.m. - Spiny Lobster/ Stone Crab Management;

11 a.m. - 11:15 a.m. - Shrimp Management;

11:15 a.m. - 11:30 a.m. - Budget/ Personnel;

11:30 a.m. - 11:45 a.m. - Red Drum Management;

11:45 a.m. - 12 p.m. - Marine Reserves;

12 p.m. - 12:30 p.m. - Administrative Policy;

12:30 p.m. - 12:45 p.m. - Mackerel Management.

12:45 p.m. - 1:15 p.m. - The Council will discuss Other Business items. The Council will conclude its meeting at 1:15 p.m.

Committees

Monday, January 28, 2008

12 p.m. - 5:30 p.m. - The Reef Fish Management Committee will meet to discuss the Options Paper for Grouper/ Tilefish individual fishing quota (IFQ); Reef Fish Amendment 30A; Update on Socioeconomic Panel (SEP) Grouper Allocation Recommendations; Public Hearing Draft of Reef Fish Amendment 30B; and Report of Ad Hoc Recreational Red Snapper AP.

- Informal question and answer session on Draft Aquaculture Amendment.

Tuesday, January 29, 2008

8:30 a.m. - 12 p.m. - The Reef Fish Management Committee will continue to meet.

1:30 p.m. - 2 p.m. - The Shrimp Management Committee will meet to discuss the 2008 Cooperative Texas Closure and an update of the 2007 Vessel Effort.

2 p.m. - 2:45 p.m. - The Joint Reef Fish/Mackerel/Red Drum Management Committee will meet to discuss the Generic Aquaculture Amendment.

2:45 p.m. - 3:30 p.m. - The Marine Reserve Committee will hear an update on the National Marine Sanctuary Program's Islands in the Stream Concept.

3:30 p.m. - 4 p.m. - The Red Drum Management Committee will meet to discuss the response by Southeast Fishery Science Center (SEFSC) on the potential for an experimental harvest of red drum from the exclusive economic zone (EEZ).

4 p.m. - 4:30 p.m. - The Spiny Lobster/Stone Crab Management Committee will discuss a Generic Scoping Document for an International Minimum Size Limit.

4:30 p.m. - 5:30 p.m. - The Budget/ Personnel Committee will review the Status of the 2007 Funding; the 2008 proposed Council Operational Budget; the Statement of Organization Practices and Procedures (SOPPs) provisions for Leave Without Pay; and have a CLOSED SESSION to discuss Personnel.

Wednesday, January 30, 2008

8 a.m. - 10 a.m. - The Administrative Policy Committee will discuss NMFS Guidelines for Annual Catch Limits (ACL) and Accountability Measures (AM) (if available); a staff ACL/AM Discussion Paper; and the development of an Outreach and Education Committee.

10 a.m. - 11 a.m. - The Mackerel Management Committee will discuss the Terms of Reference for a SEDAR Assessment of king mackerel.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnsuon-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: December 27, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–25475 Filed 12–31–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XE50

Gulf of Mexico Fishery Management Council; Public Meetings; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a correction of a public meeting notice.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Ad Hoc Recreational Red Snapper Advisory Panel (AP).

DATES: The meeting will convene at 1 p.m. on Wednesday, January 9, 2008 and conclude no later than 12 p.m. on Friday, January 11, 2008.

ADDRESSES: This meeting will be held at the Quorum Hotel, 700 N. Westshore Blvd., Tampa, FL 33609; telephone: (813) 289–8200.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on December 21, 2007 (72 FR 72676). This notice serves as a correction to the dates, times and adds a sentence to the end of the agenda.

The original notice stated that the meeting would conclude no later than 3 p.m. on Thursday, January 10, 2008. The meeting will now conclude no later than 12 p.m. on Friday, January 11, 2008.

At the end of the agenda, the following sentence should be added:

In addressing these issues, the AP may use break-out groups of selected panel members during a portion of the meeting in order to focus attention on these specific topics and develop discussion points for the entire AP to debate later in the meeting or at future meetings.

All other previously-published information remains the same.

Dated: December 27, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–25476 Filed 12–31–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XE74

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Groundfish Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Thursday, January 17, 2008, at 9 am.

ADDRESSES: The meeting will be held at the Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

The Council's Groundfish Oversight Committee (Committee) will meet to continue development of Amendment 16 to the Northeast Multispecies Fishery Management Plan. The Committee will resume its discussion of suggestions from the National Marine Fisheries Service for sector policies. Issues expected to be addressed include, but are not limited to, universal sector exemptions, where possible; how to address monitoring sectors pertaining to the Eastern U.S./Canada total allowable catches (TACs); crediting catch history; monitoring catch locations, and a possible delay of sector implementation until fishing year 2010. The Committee may also address other sector policy issues, but will not revisit permit history baseline decisions made at the meeting on December 12–13, 2007. The Committee will also begin development of a process for setting Annual Catch Limits (ACLs), as required by the Magnuson-Stevens Act. This discussion will include not only the administrative process (such as how often ACLs will be reviewed), but will consider the technical details for setting ACLs. Issues that are likely to be discussed include, but are not limited to, accounting for catches of groundfish in other fisheries (e.g. yellowtail flounder in the scallop fishery, cod catches in state waters fisheries, etc.), and allowing for uncertainty in assessments and management. Committee recommendations will be forwarded to the Council for action at a future date.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 27, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–25437 Filed 12–31–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XE69

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee in January, 2008 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Friday, January 25, 2008, at 8:30 a.m.

ADDRESSES: This meeting will be held at the Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500; fax: (978) 750–7991.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Council initiated a new amendment to the Scallop Fishery Management Plan ini November (2007) (Amendment 15). The Council identified a number of issues to be considered including: measures to comply with new Magnuson-Stevens Fishery Conservation and Management Act requirements such as annual catch limits (ACLs) and accountability measures (AMs); rationalization of the limited access scallop fishery; consideration of a mechanism for sectors in the limited access scallop fishery; and re-consideration of the current scallop overfishing definition. The committee will review and develop a draft scoping document for Amendment 15 for the Council to consider at the February 2008 Council

meeting. Other business will be discussed if time allows.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 27, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–25472 Filed 12–31–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XE72

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a one-day Council meeting, on January 24, 2008, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Thursday, January 24, 2008, beginning at 8:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Thursday, January 24, 2008

Following introductions and any announcements the Council will review, discuss and define allocation alternatives for inclusion in Amendment 16 to the Northeast Multispecies (Groundfish) Fishery Management Plan. If time allows, other sector-related issues may be addressed.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: December 27, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–25473 Filed 12–31–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XE71

Pacific Fishery Management Council; Public Meetings and Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of reports; public meetings, and hearings.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 2008 ocean salmon fisheries. This document announces the availability of Council documents as well as the dates and locations of meetings and public hearings comprising a portion of the Council's schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The dates and agendas for the March and April 2008 Council meetings, which are another component of the process, will be published in subsequent **Federal Register** documents prior to the actual meetings.

DATES: Written comments on the salmon management options must be received by April 1, 2008, at 4:30 p.m. Pacific Time.

ADDRESSES: Documents will be available from, and written comments should be sent to, Mr. Donald Hansen, Chairman, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384, telephone: (503) 820–2280 (voice) or (503) 820–2299 (fax). Comments can also be submitted via e-mail at: *PFMC.comments@noaa.gov* or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include the I.D. number in the subject line of the message.

For specific meeting and hearing locations, see **SUPPLEMENTARY INFORMATION**.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION:

Schedule for Document Completion and Availability

February 28, 2008: ''Review of 2007 Ocean Salmon Fisheries'' and ''Preseason Report I-Stock Abundance Analysis for 2008 Ocean Salmon Fisheries'' will be available to the public from the Council office and posted on the Council website at *http://www.pcouncil.org*.

March 24, 2008: ''Preseason Report II-Analysis of Proposed Regulatory Options for 2008 Ocean Salmon Fisheries'' and public hearing schedule will be mailed to the public and posted on the Council website at *http://www.pcouncil.org*. The report will include a description of the adopted salmon management options and a summary of their biological and economic impacts.

April 25, 2008: ''Preseason Report III-Analysis of Council-Adopted Ocean Salmon Management Measures for 2008 Ocean Salmon Fisheries'' will be available from the Council office and posted on the Council website at *http://www.pcouncil.org*.

May 1, 2008: Federal regulations for 2008 ocean salmon regulations will be published in the **Federal Register** and implemented.

Meetings and Hearings

January 22–25, 2008: The Salmon Technical Team (STT) will meet at the Council office in a public work session to draft ''Review of 2007 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues pertinent to the 2008 ocean salmon fisheries.

February 19–22, 2008: The STT will meet at the Council office in a public work session to draft ''Preseason Report I-Stock Abundance Analysis for 2008 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues pertinent to the 2008 ocean salmon fisheries.

March 31–April 1, 2008: Public hearings will be held to receive comments on the proposed ocean salmon fishery management options adopted by the Council. All public hearings begin at 7 p.m. at the following locations:

March 31, 2008: Chateau Westport, Beach Room, 710 W Hancock, Westport, WA 98595, telephone: (360) 268–9101.

March 31, 2008: Red Lion Hotel, Umpqua Room, 1313 N Bayshore Drive, Coos Bay, OR 97420, telephone: (541) 267–4141.

April 1, 2008: Red Lion Eureka, Evergreen Room, 1929 Fourth Street, Eureka, CA 95501, telephone: (707) 445–0844.

Although non emergency issues not contained in the Salmon Technical Team (STT) meeting agendas may come before the STT for discussion, those issues may not be the subject of formal STT action during these meetings. STT action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this document requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STT's intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 (voice), or (503) 820–2299 (fax) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 et. seq.

Dated: December 27, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–25436 Filed 12–31–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XE73

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Trawl Rationalization Tracking and Monitoring Committee (TRTMC) will hold a working meeting, which is open to the public.

DATES: The TRTMC meeting will be held Wednesday, January 23, 2008, from 8:30 a.m. until business for the day is completed.

ADDRESSES: The TRTMC meeting will be held at the Doubletree Hotel and Executive Meeting Center Portland Lloyd Center; 1000 NE Multnomah; Portland, OR 97232; telephone: (503) 281–6111.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The Council is considering a rationalization program to cover limited entry trawl landings in the West Coast groundfish fishery. The purpose of the TRTMC working meeting is to provide agency guidance and perspectives on design constraints and to scope likely impacts of alternative configurations of tracking and monitoring systems for trawl rationalization.

Although non-emergency issues not contained in the meeting agenda may come before the TRTMC for discussion, those issues may not be the subject of formal TRTMC action during this meeting. TRTMC action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the TRTMC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: December 27, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–25474 Filed 12–31–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration (NTIA), Department of Commerce (DOC)

ACTION: Notice of Open Meeting

SUMMARY: This notice announces a public meeting of the Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary for Communications and Information on spectrum management matters.

DATES: The meeting will be held on February 8, 2008, from 1:30 p.m. to 3:30 p.m. Mountain Standard Time.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, Institute for Telecommunication Sciences, 325 Broadway, Room 1-1103/05, Boulder, Colorado 80305. Public comments may be mailed to Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue N.W., Room 4725, Washington, DC 20230 or emailed to spectrumadvisory@ntia.doc.gov.

FOR FURTHER INFORMATION CONTACT: Eric Stark, Designated Federal Officer, at (202) 482–1880 or estark@ntia.doc.gov; Joe Gattuso at (202) 482–0977 or jgattuso@ntia.doc.gov; and/or visit NTIA's Web site at www.ntia.doc.gov/.

SUPPLEMENTARY INFORMATION:

*Background:*The Secretary of Commerce established the Spectrum Management Advisory Committee (Committee) to implement a recommendation of the President's Initiative on Spectrum Management pursuant to the President's November 29, 2004 Memorandum for the Heads of Executive Departments and Agencies on the subject of ''Spectrum Management for the 21st Century.''[1]

[1] *President's Memorandum on Improving Spectrum Management for the 21st Century*, 49 Weekly Comp. Pres. Doc. 2875 (Nov. 29, 2004) (Executive Memorandum).

This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. § 904(b). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management to enable the introduction of new spectrum-dependent technologies and services, including long-range spectrum planning and policy reforms for expediting the American public's access to broadband services, public safety, and digital television. The Committee functions solely as an advisory body in compliance with the FACA.

Matters to Be Considered: The Committee will receive recommendations and reports from its Technical Sharing Efficiencies subcommittee and Operational Sharing Efficienciessubcommittee. It will consider matters to be taken up at its next meeting. It will also provide an opportunity for public comment on these matters.

Time and Date: The meeting will be held on February 8, 2008, from 1:30 p.m. to 3:30 p.m. Mountain Standard Time. These times and the agenda topics are subject to change. Please refer to NTIA's Web site, http://www.ntia.doc.gov, for the most up-to-date meeting agenda.

Place: U.S. Department of Commerce, Institute for Telecommunication Sciences, Room 1-1103/05, 325 Broadway, Boulder, Colorado 80305. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. Due to security requirements and to facilitate entry to the building, anyone wishing to attend must contact Joe Gattuso at jgattuso@ntia.doc.gov or (202) 482–0977 at least fifteen (15) days prior to the meeting in order to provide the necessary clearance information. When arriving for the meeting, attendees must present photo or passport identification and/or a U.S. Government building pass, if applicable, and should arrive at least one-half hour prior to the start time of the meeting. The public meeting is physically accessible to people with disabilities. Individuals requiring special services, such as sign language interpretation or other ancillary aids, are asked to indicate this to Mr. Gattuso.

Status: Interested parties are invited to attend and to submit written comments. Interested parties are permitted to file written comments with the Committee at any time before or after a meeting. If interested parties wish to submit written comments for consideration by the Committee in advance of this meeting, they should be sent to the above listed address and received by close of business on February 5, 2008, to provide sufficient time for review. Comments received after February 5, 2008, will be distributed to the Committee but may not be reviewed prior to the meeting. It would be helpful if paper submissions also include a three and one-half inch computer diskette in HTML, ASCII, Word or WordPerfect format (please specify version). Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments may be submitted electronically to spectrumadvisory@ntia.doc.gov. Comments provided via electronic mail may also be submitted in one or more of the formats specified above.

Records: NTIA is keeping records of all Committee proceedings. Committee records are available for public inspection at NTIA's office at the address above. Documents including the Committee's charter, membership list, agendas, minutes, and any reports are or will be available on NTIA's Committee Web site at http://www.ntia.doc.gov/advisory/spectrum.

Dated: December 27, 2007.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. E7–25492 Filed 12–31–07; 8:45 am]

BILLING CODE 3510–60–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Notice: TV Converter Box Coupon Program Public Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: NTIA will hold a public meeting on January 24, 2008, in connection with its TV Converter Box Coupon Program described in the Final Rule that was released on March 12, 2007.[1]

DATES: The meeting will be held on January 24, 2008, from 2 p.m. to 4 p.m., Eastern Standard Time.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Room 4830, Washington, D.C. (Please enter at 14th Street). The handicapped accessible entrance is located at the 14th Street Aquarium Entrance.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meeting, contact Mary Lou Kenny, Partnership Manager, at (202) 482–9114.

SUPPLEMENTARY INFORMATION: NTIA will host a public meeting to discuss how to leverage existing communications channels within Federal departments and agencies to inform consumers about the digital television transition and the TV Converter Box Coupon Program. Detailed information about the Coupon Program is available at www.dtv2009.gov.

Because of space limitation, attendance will be determined on a first-come, first-served basis. The meeting will be physically accessible to people with disabilities. Individuals requiring special services, such as sign language interpretation or other ancillary aids, are asked to indicate this to Mary Lou Kenny at least two (2) days prior to the meeting. Members of the public will have an opportunity to ask questions at the meeting. Individuals who would like to submit questions in writing should e-mail their questions to Mary Lou Kenny at MKenny@ntia.doc.gov.

Dated: December 27, 2007.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. E7–25494 Filed 12–31–07; 8:45 am]

BILLING CODE 3510–60–S

[1] *See Rules to Implement and Administer a Coupon Program for Digital-to-Analog Converter Boxes,* 72 FR 12097 (March 15, 2007)

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Docket No. 071018612-7895-02

Privacy Act of 1974; System of Records

AGENCY: National Telecommunications and Information Administration (NTIA),Department of Commerce.

ACTION: Notice.

SUMMARY: The National Telecommunications and Information Administration (NTIA) publishes this notice to announce the effective date of a Privacy Act System of Records entitled COMMERCE/NTIA-1, Applications Related to Coupons for Digital-to-Analog Converter Boxes. NTIA is creating a new system of records for applications related to coupons for the Digital-to-

Analog Converter Box program. Information will be collected from individuals under the authority of Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4, 21 (Feb. 8, 2006) (hereinafter ''the Act'') and pursuant to regulations published by NTIA in 47 C.F.R. § 301. This new system of records is necessary to identify those households that qualify for and receive coupons towards the purchase of a digital-to-analog converter box.

DATES: The system of records will be effective on January 2, 2008.

ADDRESSES: For a copy of the system of records please mail requests to Stacy Cheney, Attorney-Advisor, Office of the Chief Counsel, National Telecommunications and Information Administration, Room 4713, 1401 Constitution Avenue, N.W., Washington, DC 20231. A copy of the system of records is also available on NTIA's website at: http://www.ntia.doc.gov/ntiahome/frnotices/2007/SystemRecords__112007.pdf.

FOR FURTHER INFORMATION CONTACT: Stacy Cheney, Attorney-Advisor, Office of the Chief Counsel, National Telecommunications and Information Administration, Room 4713, 1401 Constitution Avenue, N.W., Washington, DC 20231.

SUPPLEMENTARY INFORMATION: On November 26, 2007, NTIA published in the *Federal Register* a notice requesting comments on a proposed Privacy Act System of Records entitled COMMERCE/NTIA-1, Applications Related to Coupons for Digital-to-Analog Converter Boxes. *See*, 72 Fed. Reg. 65,943 (Nov. 26, 2007). No comments were received in response to the request for comments. By this notice, NTIA is adopting the proposed system of records as final without changes effective on January 2, 2008.

Dated: December 27, 2007.

Brenda Dolan,

Freedom of Information/Privacy Act Officer, U.S. Department of Commerce.

[FR Doc. E7–25493 Filed 12–31–07; 8:45 am]

BILLING CODE 3510–60–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Intent to Prepare an Environmental Impact Statement for Power Upgrades Project Within the Fort Meade Complex, MD

AGENCY: Department of Defense; National Security Agency/Central Security Service.

ACTION: Notice of intent; notice of public meeting; request for comments.

SUMMARY: The National Security Agency (NSA) announces that it intends to prepare an Environmental Impact Statement (EIS) as part of the environmental planning process for power and utility upgrades at Fort George G. Meade, Maryland (hereafter referred to as Fort Meade). The project was initiated to address aging infrastructure reliability issues as well as meet mission growth requirements. The Proposed Action includes the construction of generator facilities, two electrical substations, a boiler plant and chiller plant, as well as ancillary facilities and parking. The proposed utility upgrades would allow for 100 percent self-contained redundancy, should off site power sources fail.

Publication of this notice begins a scoping process that identifies and determines the scope of environmental issues to be addressed in the EIS. This notice requests public participation in the scoping process and provides information on how to participate.

DATES: There will be an open house at 4 p.m. followed by a scoping meeting from 5 p.m. to 7 p.m. on February 20, 2007, at the Ramada Laurel, 3400 Fort Meade Road, Laurel, Maryland 20724, which is near Fort Meade. Comments or questions regarding this EIS should be submitted by 30 days from the date of publication in the **Federal Register** to ensure sufficient time to consider public input in the preparation of the Draft EIS.

ADDRESSES: The open house and scoping meeting will be held at the Ramada Laurel, 3400 Fort Meade Road, Laurel, Maryland 20724. Oral and written comments will be accepted at the scoping meeting. Written comments can also be mailed to Mr. Jeffrey Williams, Environmental and Safety Services, National Security Agency, 9800 Savage Road Suite 6404, Fort Meade, MD 20755–6248 or submitted by e-mail to Mr. Williams at *jdwill2@nsa.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Williams at (301) 688–2970, or e-mail *jdwill2@nsa.gov*.

SUPPLEMENTARY INFORMATION:

Background: The National Security Agency (NSA) is a tenant DOD agency on Fort Meade. NSA is a high-technology organization that is on the frontiers of communications and data processing. In order to meet mission growth requirements as well as address aging infrastructure reliability information, power upgrades are needed at the NSA campus on Fort Meade.

Proposed Action and Alternatives: The Power Upgrades Project, an NSA investment and major systems acquisition, was initiated to meet the growth requirements of NSA as well as address aging infrastructure reliability issues. The Proposed Action would consist of construction of the following:

—50 mega volt amp (MVA) North Electrical Substation with 15 kilo volt (kV) switchgears, a 50 mega watt (MW) generator plant with pollution control system and oil storage facilities.
—South Generator facility consisting of 36 MW generator plant.
—Replacement of four 85–90 million British Thermal Units per hour (MMBTU/hr) boilers, the boiler building, and two 200,000 aboveground oil storage tanks.
—Addition of a central chiller plant of 20,000 tons of chilled water capacity with a dedicated substation and emergency generator capacity.
—Replacement surface parking and parking garages.
—Associated ancillary equipment and utility connections.

Alternatives identified include up to five locations for the proposed construction of the North and East substation facilities on the NSA campus, two options for power generation, and various pollution control systems. These alternatives will be developed during preparation of the Draft EIS as a result of public and agency input and environmental analyses of the activities. The No Action Alternative (not undertaking the Power Upgrade Project) will also be analyzed in detail.

This notice of intent is required by 40 CFR 1508.22, and briefly describes the proposed action and possible alternatives and our proposed scoping process. The EIS will comply with the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality regulations in 40 CFR parts 1500–1508, and NSA Draft NEPA implementation procedures.

Significant Issues: Environmental issues to be analyzed in the EIS will include potential impacts on air quality, natural resources, water use, solid waste, cultural resources, and cumulative impacts from increased burdens to the installation and neighboring community based on projected growth.

Scoping Process: Public scoping is an early and open process for identifying and determining the scope of issues to be addressed in the EIS. Scoping begins with this notice, continues through the public comment period (see **DATES**), and ends when the DOD has completed the following actions:

—Invites the participation of Federal, State, and local agencies, any affected Indian tribe and other interested persons.
—Determines the actions, alternatives, and impacts described in 40 CFR 1508.25.
—Identifies and eliminates from detailed study those issues that are not significant or that have been covered elsewhere.
—Indicates any related environmental assessments or environmental impact statements that are not part of the EIS.
—Other relevant environmental review and consultation requirements.
—Indicates the relationship between timing of the environmental review and other aspects of the proposed program.
—At its discretion, exercises the options provided in 40 CFR 1501.7(b).

Once the scoping process is complete, the DoD will prepare a Draft EIS, and will publish a **Federal Register** notice announcing its public availability. If you want that notice to be sent to you, please contact the DoD Project Office point of contact identified in **FOR FURTHER INFORMATION CONTACT**. You will have an opportunity to review and comment on the Draft EIS. Additionally, the DoD anticipates holding a public meeting after publication of the DEIS in the vicinity of Fort Meade, Maryland to present the Draft EIS and receive public comments regarding the document. The DoD will consider all comments received and then prepare the Final EIS. As with the Draft EIS, the DoD will announce the availability of the Final EIS and once again give you an opportunity for review and comment.

December 21, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E7–25451 Filed 12–31–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board

AGENCY: DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place:

1. *Name of Committee:* Defense Business Board (DBB).
2. *Date:* Wednesday, January 16, 2008.
3. *Time:* 2 p.m. to 3:30 p.m.
4. *Location:* Pentagon, Room 3E863.
5. *Purpose of the Meeting:* The mission of the DBB is to advise the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense. At this meeting, the Board will deliberate on findings from three task groups: (1) Task Group on Tooth-to-Tail Review, (2) Task Group on Capability Requirements High-level Review, and (3) Task Group on Engaging U.S. Business in Support of National Security. Copies of DRAFT Task Group presentations will be available on Friday, January 11th by contacting the DBB Office.
6. *Agenda:* 2 p.m.–3:30 p.m. Public Meeting.
   - Task Group Reports:
   - Tooth-to-Tail.
   - Capability Requirements High-level Review.
   - Engaging U.S. Business in Support of National Security.
7. *Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. Members of the public who wish to attend the meeting must contact the Defense Business Board no later than Noon on Monday, January 14th to arrange a Pentagon escort. Public attendees are required to arrive at the Pentagon Metro Entrance by 1:30 p.m. and complete security screening by 1:45 p.m. Security screening requires two forms of identification: (1) A government-issued photo I.D., and (2) any type of secondary I.D. which verifies the individual's name (i.e. debit card, credit card, work badge, social security card).
8. *Committee's Designated Federal Officer:* Kelly Van Niman, Defense Business Board, 1155 Defense Pentagon, Room 3C288, Washington, DC 20301–1155, *kelly.vanniman@osd.mil,* (703) 697–2346.

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Defense Business Board about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Defense Business Board.

All written statements shall be submitted to the Designated Federal Officer for the Defense Business Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed above at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Defense Business Board until its next meeting.

The Designated Federal Officer will review all timely submissions with the Defense Business Board Chairperson and ensure they are provided to all members of the Defense Business Board before the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTACT: Ryan Bates, Defense Business Board, 1155 Defense Pentagon, Room 3C288, Washington, DC 20301–1155, *ryan.bates@osd.mil,* (703) 697–2346.

Dated: December 21, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–25452 Filed 12–31–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board will meet in closed session on February 6–7, 2008; at the Pentagon, Arlington, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Board will discuss interim finding and recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture and homeland security.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2) and 41 CFR 102–3.155, the Department of Defense has determined that these Defense Science Board Quarterly meeting will be closed to the public. Specifically, the Under Secretary of Defense (Acquisition, Technology and Logistics), with the coordination of the DoD Office of General Counsel, has determined in writing that all sessions of these meetings will be closed to the public because they will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(1).

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed below, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Rose, Executive Officer, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *debra.rose@osd.mil*, or via phone at (703) 571–0084.

Dated: December 21, 2007.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–25469 Filed 12–31–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Nuclear Deterrence Skills will meet in closed session on January 17, 2008; at the 509th Bomber Wing, Whitman AFB, MO; and on January 18, 2008; at the National Nuclear Security Administration, Nevada Site Office, Las Vegas, NV.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Assess all aspects of nuclear deterrent skills as well as the progress Department of Energy (DoE) has made since the publication of the Chiles Commission report.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTRACT: CDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil*, or via phone at (703) 571–0083.

Dated: December 21, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–25470 Filed 12–31–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Electronic Cohort Default Rate Appeals (eCDR Appeals)

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of a new system of records entitled ''Electronic Cohort Default Rate Appeals (eCDR Appeals)''.

18–11–18

The eCDR Appeals system will be used to process institution of higher education cohort default rate challenges and adjustment requests. The eCDR Appeals system will also contain records regarding borrowers who have applied for and received loans under the William D. Ford Federal Direct Loan (Direct Loan) Program and the Federal Family Education Loan (FFEL) Program. The Department seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act.

DATES: We must receive your comments about this new system of records on or before February 1, 2008.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 27, 2007. This system of records will become effective at the later date of—(1) The expiration of the 40-day period for OMB review on February 5, 2008; or (2) February 1, 2008, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about this new system of records to Donna Bellflower, Default Prevention and Management, Portfolio Performance Management Staff, Federal Student Aid, U.S. Department of Education, Union Center Plaza, 830 First Street, NE., room 84B2, Washington, DC 20202–5353. If you prefer to send comments through the Internet, use the following address: *http://comments@ed.gov*.

You must include the term ''eCDR Appeals'' in the subject line of your electronic message.

During and after the comment period, you may inspect all comments about this notice at the U.S. Department of Education in room 84B2, Union Center Plaza, 8th Floor, 830 First Street, NE., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Donna Bellflower. Telephone number: (202) 377–3196. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., Braille, large print,

audiotape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in part 5b of title 34.

The Privacy Act applies to a record about an individual that is maintained in a system of records from which individually identifying information is retrieved by a unique identifier associated with each individual, such as a name or Social Security number. The information about each individual is called a ''record,'' and the system, whether manual or computer-based, is called a ''system of records.''

The Privacy Act requires each agency to publish a system of records notice in the **Federal Register** and to submit, whenever the agency publishes a new system of records or makes a significant change to an established system of records, a report to the Administrator of the Office of Information and Regulatory Affairs, OMB. Each agency is also required to send copies of the report to the Chair of the Committee on Oversight and Government Reform of the House of Representatives, and to the Chair of the Committee on Homeland Security and Governmental Affairs of the Senate.

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara*.

Dated: December 27, 2007.

Lawrence A. Warder,

Acting Chief Operating Officer, Federal Student Aid.

For the reasons discussed in the preamble, the Acting Chief Operating Officer, Federal Student Aid, U.S. Department of Education publishes a notice of a new system of records, to read as follows:

SYSTEM NUMBER:

18–11–18.

SYSTEM NAME:

Electronic Cohort Default Rate Appeals (eCDR Appeals).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

(1) Default Prevention and Management, Portfolio Performance Management Staff, Federal Student Aid, U.S. Department of Education, Union Center Plaza, 830 First Street, NE., room 84B2, Washington, DC 20202–5353.

(2) Perot Systems, 2300 W. Plano Parkway, Plano, TX 75075.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The eCDR Appeals system contains records on borrowers who have received loans under the William D. Ford Federal Direct Loan (Direct Loan) Program and the Federal Family Education Loan (FFEL) Program. Although the eCDR Appeals system contains information about institutions associated with individuals, this system of records notice pertains only to individuals protected under the Privacy Act of 1974, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

The eCDR Appeals system contains records regarding: (1) Student/borrower identifier information including Social Security number and name; (2) loan information (e.g., last date of attendance, date entered repayment, default date) for each student/borrower loan counted in the cohort default rate of the institution of higher education submitting the cohort default rate challenge or adjustment request; and (3) documentation submitted by an institution of higher education or data manager to support its data allegation (e.g., enrollment verification, copies of cancelled checks, etc.).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. 1082, 1085, 1094, 1099c.

PURPOSE(S):

The information contained in the records maintained in this system is used for the following purposes:

(1) To allow institutions of higher education to electronically challenge their draft cohort default rate data, and electronically request an adjustment to their official cohort default rate data via an uncorrected data adjustment or new data adjustment request;

(2) To allow data managers to electronically view and respond to cohort default rate challenges and adjustment requests from institutions of higher education. Note: Data managers are determined on the basis of the holder of the loan. For FFEL Program loans held by the lender or its guaranty agency, the guaranty agency is the data manager for the purpose of the appeal. If the Department is the holder of the FFEL Program loan, then the Department is the data manager. For Direct Loans, the Direct Loan servicer is the data manager; and

(3) To allow Federal Student Aid to electronically view and respond to cohort default rate challenges and adjustment requests from institutions of higher education.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. The Department may make these disclosures on a case-by-case basis, or, if the Department has complied with the computer matching requirements of the Computer Matching and Privacy Protection Act of 1988, as amended, under a computer matching agreement.

(1) *Program Disclosures.* The Department may disclose records to the institution of higher education or data manager responsible for entering the loan information into the eCDR appeals system, in order to obtain clarification or additional information to assist in determining the outcome of the allegation.

(2) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency, or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity's jurisdiction.

(3) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statutory, regulatory, or legally binding requirement, the Department may disclose the relevant

records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive order, rule, regulation, or order issued pursuant thereto.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components.

(ii) Any Department employee in his or her official capacity.

(iii) Any Department employee in his or her individual capacity if the U.S. Department of Justice (DOJ) has been requested to or has agreed to provide or arrange for representation for the employee.

(iv) Any Department employee in his or her individual capacity where the Department has agreed to represent the employee.

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to DOJ.* If the Department determines that disclosure of certain records to DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that it is relevant and necessary to the litigation or ADR to disclose certain records to an adjudicative body before which the Department is authorized to appear, to an individual, or to an entity designated by the Department or otherwise empowered to resolve or mediate disputes, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, or Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(5) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may disclose records to DOJ or the OMB if the Department concludes that disclosure would help in determining whether particular records are required to be disclosed under the FOIA or the Privacy Act.

(6) *Contract Disclosure.* If the Department contracts with an entity to perform any function that requires disclosing records to the contractor's employees, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(7) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a member of Congress or the member's staff in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested the inquiry.

(8) *Disclosure in the Course of Responding to Breach of Data.* The Department may disclose records to appropriate agencies, entities, and persons when (1) it is suspected or confirmed that the security or confidentiality of information in the eCDR Appeals system has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of the eCDR Appeals system or other systems or programs (whether maintained by the Department or by another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist the Department in responding to the suspected or confirmed compromise and in helping the Department prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES: NONE.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a database on the Department's secure servers and in other electronic storage media.

RETRIEVABILITY:

Records are retrieved by a unique institution of higher education code number provided by the Department to participating institutions and the borrower's Social Security number.

SAFEGUARDS:

Access to the records is limited to authorized personnel only. All physical access to the Department's site and to the site of the Department's contractor where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the buildings for his or her employee or visitor badge.

The computer system employed by the Department and by the Department's contractors offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a ''need to know'' basis, and controls an individual user's ability to access and alter records within the system. All users of this system of records are given a unique user identification. The Department's Federal Student Aid Information Security Privacy Policy requires the enforcement of a complex password policy. In addition, users are required to change their password at least every 60 to 90 days in accordance with the Department's information technology standards. At the principal site of the Department's contractor in Plano, Texas, additional physical security measures are in place and access is monitored 24 hours per day, 7 days a week.

RETENTION AND DISPOSAL:

The records associated with an institution of higher education's cohort default rate challenge or adjustment request are currently unscheduled pending National Archives and Records Administration (NARA) approval of a records retention schedule. Until a NARA-approved records schedule is in effect, no records will be destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Appeals Team Lead, Default Prevention and Management, Portfolio Performance Management Staff, U.S. Department of Education, Federal Student Aid, Union Center Plaza, 830 First Street, NE., room 84B2, Washington, DC 20202–5353.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of regulations in 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to your record in the system of records, contact the system manager at the address listed under, SYSTEM MANAGER AND ADDRESS. Requests should contain

your full name, address, and telephone number. Your request must meet the requirements of regulations in 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations in 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

Information maintained in this system of records is obtained from institutions of higher education and data managers, and the National Direct Student Loan Data System.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

[FR Doc. E7–25510 Filed 12–31–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Financial Management System (FMS)

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), (5 U.S.C. 552a), the Department of Education (Department) publishes this notice of a new system of records entitled the ''Financial Management System (FMS)'' (18–11–17).

FMS interfaces with other Federal Student Aid systems and consolidates and centralizes all Federal Student Aid accounting and financial data into one system. FMS is a conduit (pass-through system) containing personally identifiable information that is obtained from other Federal Student Aid systems. FMS has been in operation since October 2001. However, because FMS maintains Privacy Act records and discloses these records to the United States Department of the Treasury and to loan holders, a management decision was made to treat FMS as an official system of records under the Privacy Act.

DATES: The Department seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on or before February 1, 2008.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 27, 2007. This new system of records will become effective at the later date of—(1) The expiration of the 40-day period for OMB review on February 5, 2008, or (2) February 1, 2008 unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about this new system of records to John Hurt, Director, Financial Management Group, Office of the Chief Financial Officer (OCFO), Federal Student Aid, U.S. Department of Education, 830 First Street, NE., Union Center Plaza (UCP), room 54C3, Washington, DC, 20202–5345. If you prefer to send your comments through the Internet, use the following address: *comments@ed.gov.*

You must include the term ''Financial Management System of Records'' in the subject line of your electronic comment.

During and after the comment period, you may inspect all public comments about this notice at the U.S. Department of Education in room 54C3, UCP, 5th Floor, 830 First Street, NE., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., eastern time, Monday through Friday of each week, except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice.

If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: John Hurt. *Telephone number:* 202–377–3453. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of a new system of records. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to a record about an individual that is maintained in a system of records from which information is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a ''record,'' and the system, whether manual or computer-based, is called a ''system of records.'' The Privacy Act requires each agency to publish a system of records notice in the **Federal Register** and to submit, whenever the agency publishes a new system of records or makes a significant change to an established system of records, a report to the Administrator of the Office of Information and Regulatory Affairs, OMB. Each agency is also required to send copies of the report to the Chair of the Committee on Oversight and Government Reform of the House of Representatives, and to the Chair of the Committee on Homeland Security and Governmental Affairs of the Senate.

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Dated: December 27, 2007.

Lawrence A. Warder,

Acting Chief Operating Officer, Federal Student Aid.

For the reasons discussed in the preamble, the Acting Chief Operating Officer, Federal Student Aid, U.S. Department of Education (Department) publishes a notice of a new system of records to read as follows:

18–11–17

SYSTEM NAME:

Financial Management System (FMS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION(S):

(1) Financial Management Group, Office of the Chief Financial Officer (OCFO), Federal Student Aid, U.S. Department of Education, 830 First Street, NE., Union Center Plaza (UCP), room 54C3, Washington, DC 20202–5345.

(2) Perot Systems Corporation, 2300 W. Plano Parkway, Plano, TX 75075–8427.

(3) ACS Education Services, Inc., 501 Bleecker Street, Utica, NY 13501–2401.

(4) ACS Education Solutions, LLC, 12410 Milestone Center, Germantown, MD 20876–7101.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on those individual borrowers who are eligible for refunds of loan overpayments received by the Department's Office of Federal Student Aid under Title IV of the Higher Education Act of 1965, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

The FMS system contains personally identifiable information about individual borrowers who are entitled to a refund of an overpayment or discharge, or both. The system includes a borrower's social security number, name and address, amount of overpayment to be refunded, and name of the loan holder.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title IV of the Higher Education Act of 1965, as amended (HEA), (20 U.S.C. 1070 *et seq.*).

PURPOSE(S):

Information in this system is maintained for the purpose of processing refunds to borrowers or loan holders (lenders and guaranty agencies) for overpayments and discharges of Title IV Federal student aid. When a loan overpayment or loan discharge occurs and FMS receives loan refund information, FMS sends refund transaction data (the borrower's name and other identifiers) to the Department of Education's Central Automated Processing System (EDCAPS) for posting to the general ledger and subsequent payment by the Department of the Treasury to the borrower or loan holder (lenders and guaranty agencies).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected.

These disclosures may be made on a case-by-case basis, or, if the Department has complied with the computer matching requirements of the Computer Matching and Privacy Protection Act of 1988, as amended, under a computer matching agreement.

(1) *Program Disclosure.* In order to refund loan overpayments back to the borrower or loan holder and to answer questions that may arise about the refund payments, the Department may disclose information from this system to the Department of the Treasury via Treasury's Electronic Certification System (eCS) or to the loan holder.

(2) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(3) *Research Disclosure.* The Department may disclose records to a researcher if the Director, Financial Management Group, Office of Chief Financial Officer, Federal Student Aid, determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The Director may disclose records from this system of records to that researcher solely for the purpose of carrying out research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(4) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity's jurisdiction.

(5) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, Executive order, regulation, or rule of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, order, regulation, or rule, issued pursuant thereto.

(6) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the following parties listed below is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components.

(ii) Any Department employee in his or her official capacity.

(iii) Any Department employee in his or her individual capacity if the U.S. Department of Justice (DOJ) has been requested to or has agreed to provide or arrange for representation for the employee.

(iv) Any Department employee in his or her individual capacity where the Department has agreed to represent the employee.

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that it is relevant and necessary to the litigation or ADR to disclose certain records to an adjudicative body before which the Department is authorized to appear, to an individual, or to an entity designated by the Department or otherwise empowered to resolve or mediate disputes, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, or Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to litigation or ADR, the

Department may disclose those records as a routine use to a party, counsel, representative, or witness.

(7) *Freedom of Information Act (FOIA) or Privacy Act Advice Disclosure.* The Department may disclose records to the DOJ or the OMB if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA or Privacy Act.

(8) *Disclosure to the DOJ.* The Department may disclose records to the DOJ to the extent necessary to obtain DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(9) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a member of Congress or the member's staff in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested the inquiry.

(10) *Disclosure in the Course of Responding to Breach of Data.* The Department may disclose records from this system of records to appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that the security or confidentiality of information in the FMS has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of the FMS or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and, (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hardcopy, microfilm, magnetic storage and optical storage media, such as tape, disk, etc.

RETRIEVABILITY:

Records in this system are retrievable by social security number or name of borrower.

SAFEGUARDS:

This system of records limits data access to Department and contract staff on a need-to-know basis and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user identification and are required to establish a password that adheres to the Federal Student Aid Information Security and Privacy Policy requiring a complex password that must be changed every 60–90 days in accordance with Department information technology standards. Annually, all users of FMS must acknowledge the completion of FMS-specific security awareness training before they can obtain or renew their access to this system of records. An automated audit trail documents the identity of each person and device having access to FMS.

RETENTION AND DISPOSAL:

FMS' records retention and disposal schedule is in compliance with the Department's Records Retention and Disposition Schedule (RRDS) policy and the guidance specified in the National Archives and Records Administration (NARA) General Records Schedule (GRS) 7 entitled ''Expenditure Accounting Records.''

SYSTEM MANAGER(S) AND ADDRESS:

(1) Financial Management System (FMS)—Director, Financial Management Group, OCFO, Federal Student Aid, U.S. Department of Education, 830 1st Street, NE., UCP, Washington, DC 20202–5345.

(2) Direct Loan Servicing System (DLSS)—Director, Servicing Group, Borrower Services, Federal Student Aid, U.S. Department of Education, 830 1st Street, NE., UCP, Washington, DC 20202–5345.

(3) Direct Loan Consolidation System (DLCS)—Director, Consolidation Group, Borrower Services, Federal Student Aid, U.S. Department of Education, 830 1st Street, NE., UCP, Washington, DC 20202–5345.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, provide the system manager with your name, date of birth, and social security number. Your requests must meet the requirements of the regulations in 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to a record in this system of records, provide the system manager with your name, date of birth, and social security number. Your requests for access to a record must meet the requirements of the regulations in 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request to correct or amend a record must meet the requirements of the regulations in 34 CFR 5b.7, including proof of identity, specification of the particular record that you are seeking to have changed, and the written justification for making such a change.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from other Department and contractor-managed systems, such as the Direct Loan Servicing, Direct Loan Consolidation System, Conditional Disability Discharge Tracking System, Campus Based Student Loan System, as well as manual and electronic processes internal to Federal Student Aid.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–25520 Filed 12–31–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver From Sanyo Fisher Company and Granting of the Application for Interim Waiver From the Department of Energy Residential and Commercial Central Air Conditioner and Heat Pump Test Procedures [Case No. CAC–017]

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, granting of application for interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes a Petition for Waiver from Sanyo Fisher Company, (Sanyo). The Petition for Waiver (hereafter ''Sanyo Petition'') requests a waiver of the Department of Energy (DOE) test procedures applicable to residential and commercial central air conditioners and heat pumps. The waiver request is specific to the Sanyo Variable Refrigerant Flow (VRF) ECO-i multi-split heat pumps and heat recovery systems. Through this document, DOE

is: (1) Soliciting comments, data, and information with respect to the Sanyo Petition; and (2) granting an Interim Waiver to Sanyo from the DOE test procedures for residential and commercial central air conditioners and heat pumps.

DATES: DOE will accept comments, data, and information with respect to the Sanyo Petition until, but no later than February 1, 2008.

ADDRESSES: You may submit comments, identified by case number [CAC–017], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Michael.Raymond@ee.doe.gov.* Include either the case number [CAC–017], and/or ''Sanyo Petition'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format, and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. DOE does not accept telefacsimiles (faxes).

Any person submitting written comments must also send a copy of such comments to the petitioner, pursuant to 10 CFR 430.27(d) and 10 CFR 431.401(d). The contact information for the petitioner is: Mr. Davis Watkins, Vice President, Applied Products Group, Sanyo Fisher Company, 1690 Roberts Blvd., NW., Suite 110, Kennesaw, GA 30144. Telephone: (678) 384–3112. E-mail: *dwatkins@sss.sanyo.com.*

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to review the documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza (Resource Room of the Building Technologies Program), Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the Petition for Waiver and Application for Interim Waiver; and (4) prior DOE rulemakings regarding central air conditioners and heat pumps. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note that DOE's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer housing rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *Michael.Raymond@ee.doe.gov.*

Ms. Francine Pinto or Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov* or *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309) Similar to the Program in Part B, Part C of Title III provides for an energy efficiency program titled ''Certain Industrial Equipment,'' which includes commercial air conditioning and heating equipment, package boilers, water heaters, and other types of commercial equipment. (42 U.S.C. 6311–6317)

This notice involves residential products under Part B, as well as commercial equipment under Part C. Under both parts, the statute specifically includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. (42 U.S.C. 6291–6296; 6311–6316) With respect to test procedures, both parts authorize the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3); 6314(a)(2))

Relevant to the current Petition for Waiver, the test procedure for residential central air conditioning and heat pump products is set forth in 10 CFR Part 430, Subpart B, Appendix M. For commercial package air conditioning and heating equipment, EPCA provides that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES [Illuminating Engineering Society of North America] Standard 90.1 and in effect on June 30, 1992.'' (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the statute further directs the Secretary to amend the test procedure for a covered commercial product if the industry test procedure is amended, unless the Secretary determines that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule in the **Federal Register** adopting test procedures for commercial package air conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. DOE adopted ARI Standard 210/240–2003 for commercial package air conditioning and heating equipment with capacities <65,000 British thermal units per hour (Btu/h) and ARI Standard 340/360–2004 for commercial package air conditioning and heating equipment with capacities ≥65,000 Btu/h and <240,000 Btu/h. *Id.* at 71371. Pursuant

to this rulemaking, DOE's regulations at 10 CFR 431.95(b)(2) incorporate by reference the relevant ARI standards, and DOE's regulations at 10 CFR 431.96 direct manufacturers of commercial package air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. (The cooling capacities of Sanyo's ECO-i VFR commercial and residential multi-split products respectively fall in the ranges covered by ARI Standard 340/360–2004 and the DOE test procedure for residential products referred to above.)

DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products, if the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or if the test procedures may evaluate the basic product in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). The waiver provisions for commercial equipment are substantively identical to those for covered consumer products and are found at 10 CFR 431.401(a)(1). Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii); 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l); 10 CFR 431.401(f)(4). Waivers generally remain in effect until the effective date of a final rule which prescribes amended test procedures appropriate to the model series manufactured by the petitioner, thereby eliminating any need for the continuation of the waiver. 10 CFR 430.27(m); 431.401(g).

The waiver process also permits parties submitting a Petition for Waiver to file an Application for Interim Waiver from the prescribed test procedure requirements. 10 CFR 430.27(a)(2); 10 CFR 431.401(a)(2). The Assistant Secretary will grant an Interim Waiver request if it is determined that the applicant will experience economic hardship if the Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. 10 CFR 430.27(g); 10 CFR 431.401(e)(3). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary. 10 CFR 430.27(h); 10 CFR 431.401(e)(4).

II. Petition for Waiver

On February 22, 2007, Sanyo filed a Petition for Waiver from the test procedures applicable to residential and commercial package air-conditioning and heating equipment and an Application for Interim Waiver. The applicable test procedure for Sanyo's residential ECO-i multi-split products is the DOE residential test procedure found in 10 CFR Part 430, Subpart B, Appendix M. For Sanyo's commercial ECO-i multi-split products, the applicable test procedure is ARI 340/360–2004, because, as discussed in the previous section I above (Background and Authority), this is the test procedure specified in Tables 1 and 2 to 10 CFR 431.96.

Sanyo seeks a waiver from the DOE test procedures for this product class on the grounds that its ECO-i multi-split heat pump and heat recovery systems contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, Sanyo asserts that the two primary factors that prevent testing of multi-split variable speed products, regardless of manufacturer, are the same factors stated in the waiver granted to Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) for a similar line of commercial multi-splits:

- Testing laboratories cannot test products with so many indoor units.
- There are too many possible combinations of indoor and outdoor units to test.

69 FR 52660, 52661 (August 27, 2004).

Further, Sanyo states that its ECO-i product offering is a multi-split system incorporating a diverse amount and configuration of indoor units for connection to a single outdoor unit, and that it is impractical to test the performance of each system under the current DOE test procedure. The number of connectable indoor units for each outdoor unit ranges from 6 to 28. Furthermore, the indoor units are designed to operate at many different external static pressure values, which compounds the difficulty of testing. A testing facility could not manage proper airflow at several different external static pressure values for the many indoor units that would be connected to an ECO-i outdoor unit.

Accordingly, Sanyo requests that DOE grant a test procedure waiver for its ECO-i product designs, until a suitable test method can be prescribed. Furthermore, Sanyo states that failure to grant the waiver would result in economic hardship because it would prevent the company from marketing its ECO-i products. Also, Sanyo states that it is willing to work closely with DOE, the Air-Conditioning and Refrigeration Institute (ARI), and other agencies to develop appropriate test procedures, as necessary.

III. Application for Interim Waiver

On February 22, 2007, in addition to its Petition for Waiver, Sanyo also submitted an Application for Interim Waiver to DOE. Sanyo's Application for Interim Waiver does not provide sufficient information to evaluate the level of economic hardship Sanyo will likely experience if its Application for Interim Waiver is denied. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. DOE has previously granted Interim Waivers to Fujitsu, Samsung, and Daikin for comparable residential and commercial multi-split air conditioners and heat pumps. 70 FR 5980 (Feb. 4, 2005); 70 FR 9629 (Feb. 28, 2005); 72 FR 53237 (Sept. 18, 2007), respectively.

Moreover, as noted above, DOE approved the Petition for Waiver from Mitsubishi for its comparable line of commercial multi-split air conditioners and heat pumps. 69 FR 52660 (August 27, 2004). The two principal reasons for granting these waivers also apply to Sanyo's VRV–II–S products: (1) Test laboratories cannot test products with so many indoor units [1]; and (2) it is impractical to test so many combinations of indoor units with each outdoor unit. Thus, DOE has determined that it is likely that Sanyo's Petition for Waiver will be granted for its new ECO-i multi-split models. Therefore, *it is ordered that:*

The Application for Interim Waiver filed by Sanyo is hereby granted for Sanyo's ECO-i multi-split central air conditioners and central air-conditioning heat pumps, subject to the specifications and conditions below.

[1] According to the Sanyo petition, up to 28 indoor units are possible candidates for testing of its residential and commercial multi-split air conditioners and heat pumps. However, DOE believes that the practical limits for testing would be about five units.

The Interim Waiver applies to the following models:

1. Sanyo shall not be required to test or rate its ECO-i residential products on the basis of the currently applicable test procedure, which is set forth in 10 CFR 430, Subpart B, Appendix M. Sanyo shall not be required to test or rate its ECO-i commercial products on the basis of the currently applicable test procedure, which is set forth in ARI Standard 340/360–2004.

2. Sanyo shall be required to test and rate its ECO-i products according to the alternate test procedure as set forth below in section IV(3), ''Alternate test procedure.''

Outdoor units:

ECO-I OUTDOOR MODEL IDENTIFICATION

Model #	Nominal Capacity		Type	Phase	Voltage	Connectable Indoor Units
	Cooling	Heating				
CHX3652	38,200	42,700	Heat Pump	1	208–230	6
CHX06052	52,900	60,000	Heat Pump	1	208–230	9
CHDX09053	95,500	107,500	Heat Pump	3	208–230	16
CHDZ09053	95,500	107,500	Heat Recovery (Simultaneous heating/cooling).	3	208–230	16
CHDX14053	153,600	170,600	Heat Pump	3	208–230	28
CHDZ14053	153,600	170,600	Heat Recovery (Simultaneous heating/cooling).	3	208–230	28

Indoor units:

- AHX**52 Series; Ceiling Cassette, 1 Way Air Discharge, 7,500/9,600/12,000 BTU/hr nominal capacities.
- DHX**52 Series; Concealed Ducted, Medium External Static, 36,000/47,800 BTU/hr nominal capacities.
- FHX**52 Series; Exposed Floor Standing, 7,500/9,600/12,000/19,000/25,000 BTU/hr nominal capacities.
- FMHX**52 Series; Concealed Floor Standing, 7,500/9,600/12,000/19,000/25,000 BTU/hr nominal capacities.
- KHX**52 Series; Wall Mounted, 7,500/9,600/12,000/19,000/25,000 BTU/hr nominal capacities.
- LHX**52 Series; Ceiling Mount Slim Design 1 Way Air Discharge, 12,000/19,000/25,000 BTU/hr nominal capacities.
- SHX**52 Series; Ceiling Cassette, 2 Way Air Discharge, 7,500/9,600/12,000/19,000/25,000/36,000/47,800 BTU/hr nominal capacities.
- THX**52 Series; Ceiling Suspended, 12,000/19,000/25,000 BTU/hr nominal capacities.
- UHX**52 Series; Concealed Ducted, Low External Static, 7,500/9,600/12,000/19,000/25,000/36,000 BTU/hr nominal capacities.
- UMHX**52 Series; Concealed Slim Ducted, Low External Static, 7,500/9,600/12,000/19,000/25,000 BTU/hr nominal capacities.
- XHX**52 Series; Ceiling Cassette, 4 Way Air Discharge, 12,000/19,000/25,000/36,000 BTU/hr nominal capacities.
- XMHX**52 Series, Mini Ceiling Cassette, 4 Way Air Discharge, 7,500/9,600/12,000/19,000/25,000 BTU/hr nominal capacities.

This Interim Waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. DOE may revoke or modify this Interim Waiver at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

IV. Alternate Test Procedure

In response to two recent Petitions for Waiver from Mitsubishi, DOE specified an alternate test procedure to provide a basis from which Mitsubishi could test and make valid energy efficiency representations for its R410A CITY MULTI products, as well as for its R22 multi-split products. The Mitsubishi petitions, including the alternate test procedure, were published in the **Federal Register** on April 9, 2007. 72 FR 17528, 17532. For similar reasons, DOE believes that alternate test procedures are necessary here.

In general, DOE understands that existing testing facilities have a limited ability to test multiple indoor units at one time, and the number of possible combinations of indoor and outdoor units for some variable refrigerant flow zoned systems is impractical to test. We further note that subsequent to the waiver that DOE granted for Mitsubishi's R22 multi-split products, ARI formed a committee to discuss the issue and to work on developing an appropriate testing protocol for variable refrigerant flow systems. However, to date, no additional test methodologies have been adopted by the committee or submitted to DOE.

Therefore, as discussed below, DOE is including an alternate test procedure as a condition in granting the Interim Waiver for Sanyo's products, and plans to consider the same alternate test procedure in the context of the subsequent Decision and Order pertaining to Sanyo's Petition for Waiver. Utilization of this alternate test procedure will allow Sanyo to test and make energy efficiency representations for its ECO-i products. More broadly, DOE has also applied a similar alternate test procedure to other existing waivers for similar residential and commercial central air conditioners and heat pumps. Such cases include Samsung's Decision and Order for its multi-split products at 72 FR 71387 (Dec. 17, 2007), and Fujitsu's Decision and Order for its multi-split products at 72 FR 71383 (Dec. 17, 2007). As noted above, the alternate test procedure has been applied to Mitsubishi's Petition for Waiver for its R410A CITY MULTI and R22 multi-split products. 72 FR 17528 (April 9, 2007).

DOE believes that an alternate test procedure is needed so that manufacturers of such products can make valid and consistent representations of energy efficiency for their air-conditioning products. In the present case, DOE is modifying the alternate test procedure taken from the above-referenced waiver granted to Mitsubishi for its R410A CITY MULTI products, and plans to consider inclusion of the following similar waiver language in the Decision and Order for Sanyo's ECO-i multi-split air conditioner and heat pump models:

(1) The ''Petition for Waiver'' filed by Sanyo Fisher Company (Sanyo) is

hereby granted as set forth in the paragraphs below.

(2) Sanyo shall not be required to test or rate its ECO-i variable refrigerant volume multi-split air conditioner and heat pump products listed above in section III, on the basis of the current test procedures, but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

(3) *Alternate test procedure.*

(A) Sanyo shall be required to test the products listed in section III above according to the test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR Parts 430 and 431, except that:

(i) For products covered by 10 CFR Part 430 (consumer products), Sanyo shall not be required to comply with: (1) The first sentence in 10 CFR 430.24(m)(2), which refers to ''that combination manufactured by the condensing unit manufacturer likely to have the largest volume of retail sales''; and (2) the third sentence in 10 CFR 430(m)(2), including the provisions of 10 CFR 430(m)(2)(i) and (ii). Instead of testing the combinations likely to have the highest volume of retail sales, Sanyo may test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. Additionally, instead of following the provisions of 10 CFR 430(m)(2)(i) and (ii) for every other system combination using the same outdoor unit as the tested combination, Sanyo shall make representations concerning the ECO-i products covered in this waiver according to the provisions of subparagraph (C) below.

(ii) For products covered by 10 CFR Part 430 (consumer products), Sanyo shall be required to comply with 10 CFR Part 430, Subpart B, Appendix M, as amended by the final rule published in the **Federal Register** on October 22, 2007. 72 FR 59906. The test procedure changes applicable to multi-split products are in sections: 2.1, 2.2.3, 2.4.1, 3.2.4 (including Table 6), 3.6.4 (including Table 12), 4.1.4.2, and 4.2.4.2.

(iii) For products covered by 10 CFR Part 431 (commercial products), Sanyo shall test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as the tested combination, Sanyo shall make representations concerning the ECO-i products covered in this waiver according to the provisions of subparagraph (C) below.

(B) *Tested combination* means a multi-split system with multiple indoor coils having the following features:

(1) The basic model of a system used as a tested combination shall consist of one outdoor unit, with one or more compressors, that is matched with between 2 and 5 indoor units; for multi-split systems, each of these indoor units shall be designed for individual operation.

(2) The indoor units shall—

(i) Represent the highest sales model family, or another indoor model family if the highest sales model family does not provide sufficient capacity (see ii);

(ii) Together, have a nominal capacity that is between 95% and 105% of the nominal capacity of the outdoor unit;

(iii) Not, individually, have a capacity that is greater than 50% of the nominal capacity of the outdoor unit;

(iv) Operate at fan speeds that are consistent with the manufacturer's specifications; and

(v) All be subject to the same minimum external static pressure requirement while being configurable to produce the same static pressure at the exit of each outlet plenum when manifolded as per section 2.4.1 of 10 CFR Part 430, Subpart B, Appendix M.

(C) *Representations.* In making representations about the energy efficiency of its ECO-i variable refrigerant volume multi-split air conditioner and heat pump products, for compliance, marketing, or other purposes, Sanyo must fairly disclose the results of testing under the DOE test procedure, doing so in a manner consistent with the provisions outlined below:

(i) For ECO-i multi-split combinations tested in accordance with this alternate test procedure, Sanyo must disclose these test results.

(ii) For ECO-i multi-split combinations that are not tested, Sanyo must make a disclosure based on the testing results for the tested combination and which are consistent with either of the two following methods, except that only method (a) may be used, if available:

(a) Representation of non-tested combinations according to an Alternative Rating Method (ARM) approved by DOE; or

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

V. Summary and Request for Comments

Through today's notice, DOE announces receipt of Sanyo's Petition for Waiver from the test procedures applicable to Sanyo's ECO-i residential and commercial multi-split air conditioner and heat pump products, and for the reasons articulated above, DOE is granting Sanyo an Interim Waiver from those procedures. As part of this notice, DOE is publishing Sanyo's Petition for Waiver in its entirety. The petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that Sanyo is required to follow as a condition of its Interim Waiver and which DOE is considering including in its subsequent Decision and Order. In this alternate test procedure, DOE is defining a ''tested combination'' which Sanyo could use in lieu of testing all retail combinations of its ECO-i multi-split air conditioner and heat pump products.

Furthermore, should a subsequent manufacturer be unable to test all retail combinations, DOE is considering allowing such manufacturers to rate waived products according to an ARM approved by DOE, or to rate waived products in the same manner as that for the specified tested combination. DOE has applied a similar alternate test procedure to other comparable Petitions for Waiver for residential and commercial central air conditioners and heat pumps. Such cases include Samsung's Petition for Waiver for its Digital Variable Multi (DVM) products at 72 FR 71387 (Dec. 17, 2007), and Fujitsu's Petition for Waiver for its Airstage variable refrigerant flow products at 72 FR 71383 (Dec. 17, 2007).

DOE is interested in receiving comments on the issues addressed in this notice. Pursuant to 10 CFR 430.27(d) and 10 CFR 431.401(d), any person submitting written comments must also send a copy of such comments to the petitioner, whose contact information is included in the **ADDRESSES** section above.

Issued in Washington, DC, on December 20, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

February 22, 2007

The Honorable Alexander Karsner,
Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–0121.

Re: Petition for Waiver of Test Procedure and Application for Interim Waiver for ECO-I Air Source Heat Pumps and Heat Recovery Products.

Dear Assistant Secretary Karsner,

Sanyo Fisher Company (''SFC'') is most excited with the opportunity to

introduce to the United States HVAC market one of our most successful products marketed throughout much of the world. We refer to this as our ECO-i product line. ECO-i incorporates Variable Refrigerant Flow (VRF) and Multi-Split Zoning characteristics with a highly advanced integrated control system. We utilize variable speed compressor technology to provide high efficiency operation and individual zone control for each indoor unit.

As a result of this product line's unique design and operating characteristics, it is currently not possible to conduct testing as defined by ARI Standard 210/240 or ARI Standard 340/360. Therefore, SFC respectfully submits this Petition for Waiver from Test Procedure and simultaneously an Application for Interim Waiver of Test Procedure for our ECO-i product line in accordance with the requirements set forth in 10 CFR 431.401 (1–1–06 Edition).

Section 1—Background

SFC's ECO-i product contains characteristics that prevent testing of the system using the procedures outlined in ARI 210/240 as well as ARI 340/360. Simply stated, testing laboratories cannot test products with so many indoor units connected to a single outdoor unit. There are also too many possible indoor unit combinations to test them all. As a result of these issues, SFC seeks a waiver from test procedures until such time as a permanent or interim method of testing and rating VRF Multi-Split products is adopted.

The Department of Energy (DOE) has previously granted waivers and/or interim waivers to other manufacturers of equipment that contain the same basic design characteristics as that of SFC's ECO-i product line. Table 1 as shown below provides such detail and verification related to current and previous waiver requests for similar product.

TABLE 1.—WAIVER STATUS

Manufacturer	Petition	Interim	Product
Mitsubishi	Granted 8/2004		R–22 Air Source Heat Pump.
Mitsubishi		Granted 3/2006	R–410a City Multi Air Source.
Mitsubishi	Pending	Pending	R–410a City Multi Water Source.
Samsung		Granted Early 2005	R–22 DVM Air Source.
Fujitsu General		Granted Jan 5, 2006	AirStage Air Source.

Section 2—Basic Model Identification

ECO-i air source multi-split VRF products are planned for introduction to the United States market during the first quarter of 2007. As shown below, Table 2 provides a listing of ECO-i outdoor units incorporating inverter driven variable speed compressors. A listing of ECO-i heat pump indoor units applicable to this Petition for Waiver and Application for Interim Waiver is provided after Table 2 in the section shown as ''ECO-i Indoor Model Identification''.

TABLE 2.—ECO–I OUTDOOR MODEL IDENTIFICATION

Model No.	Nominal capacity		Type	Phase	Voltage	Connectable indoor units
	Cooling	Heating				
CHX03652	38,200	42,700	Heat Pump	1	208–230	6
CHX06052	52,900	60,000	Heat Pump	1	208–230	9
CHDX09053	95,500	107,500	Heat Pump	3	208–230	16
CHDZ09053	95,500	107,500	Heat Recovery (Simultaneous heating/cooling).	3	208–230	16
CHDX14053	153,600	170,600	Heat Pump	3	208–230	28
CHDZ14053	153,600	170,600	Heat Recovery (Simultaneous heating/cooling).	3	208–230	28

ECO-i Indoor Model Identification

All indoor units are specifically designed for use with Sanyo's ECO-i Variable Refrigerant Flow outdoor units. Indoor units are available in capacities ranging from 7,500 BTU/hr to 54,600 BTU/hr, with even more capacities to be introduced in the future. All indoor units operate on a 208–230 volt single phase power supply and the proprietary control system of Sanyo. The specific family and capacity range of indoor units is as follows:

- AHX**52 Series; Ceiling Cassette, 1 Way Air Discharge, 7,500/9,600/12,000 BTU/hr nominal capacities.
- DHX**52 Series; Concealed Ducted, Medium External Static, 36,000/47,800 BTU/hr nominal capacities.
- FHX**52 Series; Exposed Floor Standing, 7,500/9,600/12,000/19,000/25,000 BTU/hr nominal capacities.
- FMHX**52 Series; Concealed Floor Standing, 7,500/9,600/12,000/19,000/25,000 BTU/hr nominal capacities.
- KHX**52 Series; Wall Mounted, 7,500/9,600/12,000/19,000/25,000 BTU/hr nominal capacities.
- LHX**52 Series; Ceiling Mount Slim Design 1 Way Air Discharge, 12,000/19,000/25,000 BTU/hr nominal capacities.
- SHX**52 Series; Ceiling Cassette, 2 Way Air Discharge, 7,500/9,600/12,000/19,000/25,000/36,000/47,800 BTU/hr nominal capacities.
- THX**52 Series; Ceiling Suspended, 12,000/19,000/25,000 BTU/hr nominal capacities.
- UHX**52 Series; Concealed Ducted, Low External Static, 7,500/9,600/12,000/19,000/25,000/36,000 BTU/hr nominal capacities.
- UMHX**52 Series; Concealed Slim Ducted, Low External Static, 7,500/9,600/12,000/19,000/25,000 BTU/hr nominal capacities.
- XHX**52 Series; Ceiling Cassette, 4 Way Air Discharge, 12,000/19,000/25,000/36,000 BTU/hr nominal capacities.
- XMHX**52 Series; Mini Ceiling Cassette, 4 Way Air Discharge, 7,500/9,600/12,000/19,000/25,000 BTU/hr nominal capacities.

Section 3—Design Characteristics Constituting the Grounds for Petition

ECO-i VRF products enable the connection of multiple indoor units to a single outdoor unit. The outdoor unit is capable of part load operation by varying refrigerant flow through the use of inverter driven variable speed compressor technology. This results in the outdoor units operating capacity closely matching the actual indoor load. The ECO-i product line is designed to optimize overall system performance and efficiency when operating at part load which significantly decreases energy usage.

Each indoor unit of the ECO-i system may have an individual remote controller that allows the occupant to adjust their temperature independently of the set temperature of other indoor units connected to the same outdoor unit. Some of the indoor units may be set to the ''off'' mode which increases energy savings even further when heating or cooling is not required.

The variable speed compressor is capable of reducing its capacity to approximately 7,000 BTU/hr. When this variable speed compressor is coupled with another high performance single speed compressor(s) of similar size in the same outdoor unit a truly remarkable minimum capacity of as little as 7% of the rated system capacity could be achieved resulting in significant energy savings when only a small amount of heating or cooling is required.

Multi-split VRF technology that is incorporated in the ECO-i system allows up to 130% of indoor unit capacity to the rated capacity of the outdoor unit. VRF technology allows this mis-match of indoor to outdoor capacity to save energy while still meeting the HVAC requirements of the building.

ECO-i series ''CHDZ'' outdoor units go one step further by allowing the consumer to operate both heating and cooling simultaneously. In the simultaneous mode, heat is actually being removed from the ''cooling zones'' and deposited in the ''heating zones'' via the system's heat recovery ability. Although there is no approved or existing DOE, ARI or ASHRAE method to recognize the systems performance during simultaneous operation, it is certainly reasonable to believe that system efficiency is increased. This increase in efficiency occurs because some indoor units within the building are acting as condensers while other indoor units are acting as evaporators at the same time. This means that heat is transferred within the building rather than being wasted to the outdoor environment.

Multi-split VRF technology will help our nation to reduce the amount of energy needed to heat and cool our buildings. Sanyo is pleased to introduce this technology to not only improve the control that the end user has over their environment but also to help with our nation's desire to reduce overall energy usage.

Section 4—Specific Requirements Sought to be Waived

Sanyo Petitions Waiver from the Test Procedures for all ECO-i Series outdoor units along with their matching indoor units. Due to the wide capacity ratings available for the ECO-i outdoor units, a waiver is sought from the testing procedures outlined in ARI 210/240 and ARI 340/360 as identified below:

- For Sanyo outdoor units with model numbers of CHX03652 and CHX06052 (and all listed indoor units) we seek Waiver from Test Procedures as outlined in ARI Standard 210/240–2006 (Performance Rating of Unitary Air Conditioning and Air Source Heat Pump Equipment). This rating and testing standard applies to unitary air conditioners and unitary air source heat pumps rated with capacities below 65,000 BTU/hr.
- For Sanyo outdoor units with model numbers of CHDX09053, CHDZ09053, CHDX14053 and CHDZ14053 we seek Waiver from Test Procedures as outlined in ARI Standard 340/360–2004 (Performance Rating of Commercial and Industrial Unitary Air Conditioning and Heat Pump Equipment). This rating and testing standard applies to unitary air conditioners and heat pumps with capacities ranging from 65,000 to 250,000 BTU/hr.

Regardless of the capacity of ECO-i products the basic performance, application and utility of the equipment remain virtually identical in that they all utilize VRF multi-split technology. All ECO-i products utilize the same indoor units, the same piping and wiring configurations and the same control systems regardless of capacity. The above referenced testing and rating standards do not address the details required to select or configure multi-split systems in a testing facility.

SFC takes this opportunity to also request an Interim Waiver from Test Procedure for all referenced products.

Section 5—Identity of Manufacturers of Similar Basic Models

To the best of our knowledge the following manufacturers either currently market or previously marketed, similar VRF products within the United States.

- Daikin U.S. Corporation
- Fujitsu General America
- LG Electronics U.S.A., Inc.
- Mitsubishi Electric & Electronics USA, Inc.
- Samsung Electronics Company, Ltd.

Section 6—Alternate Testing Procedures

There is no alternative testing and rating procedures for VRF multi-split products that SFC is aware of which could adequately represent the performance or efficiency of this product. Our company is an active member of the ARI Ductless Section Engineering Committee. This committee is developing a proposed testing and rating standard for VRF multi-split products (ARI Standard 1230) with a goal to eliminate the need for existing and future waivers for such product.

Section 7—Need for Waiver from Test Procedure

In previous waiver petitions DOE noted that VRF multi-split systems incorporate design characteristics that virtually eliminate the possibility of broad testing of this type of technology. An example of this is provided in **Federal Register**/Vol. 69, No. 166/ Friday, August 27, 2004/Notices, page 52662 which contain the following statements:

> ''However, the two testing problems discussed above, (test laboratories cannot test products with so many indoor units, and there are too many possible combinations of indoor and outdoor units to test), do prevent testing of the basic model according to the prescribed test procedures.''
>
> ''The Department also consulted with the National Institute of Standards & Technology (NIST), who agreed that many VFRZ systems could not be tested in the laboratory.''

SFC's ECO-i product offering is a multi-split system incorporating such a diverse amount and configuration of possible indoor units that are able to be connected to a single outdoor unit that it is virtually impossible to test the performance of this system. Compounding the difficulty of testing is the fact that the indoor units are designed to operate at so many different external static pressure values. A testing facility could not manage proper airflow at several different external state pressure values to the many indoor units that would be connected to an ECO-i outdoor unit.

The challenges associated with current test procedures (of ARI 210/240 and ARI 340/360) are being addressed by the ARI Ductless Section Engineering Committee in hopes of overcoming such

difficulties while still providing a means to compare the performance of the various VRF manufacturers.

Section 8—Application for Interim Waiver

In accordance with 10 CFR 431.401 (a)(2) SFC takes this opportunity to also submit an Application for Interim Waiver of test procedures for our ECO-i models listed in Section 2 of this document and there matching indoor units. SFC believes that it is likely that our Petition for Waiver will be granted based upon, but not limited to, the following:

• The approvals of similar waiver requests as identified in Table 1 of Section 1 of this document.

• Failure to approve our Petition for Waiver and Application for Interim Waiver will result in significant economic hardship due to the following:

○ It is our intention to introduce our ECO-i product in the Spring of 2007. A great deal of company emphasis has been, and will be, placed on the introduction of this product, including show exhibitions (such as AHR, ACCA, etc.), marketing/advertising campaign, customer training and other expenditures of both financial and human resources. Delaying our entry into the U.S. market with the ECO-i product will impede our ability to compete in this growing market.

○ A significant portion of our projected sales revenues are dependent upon the timely introduction of this product.

• DOE's statement:

''* * * an interim waiver will be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistance Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination for the Petition for Waiver'' (Case CAC–009), 70 Fed Reg 9629, at 9630 (Feb 28, 2005 Samsung Interim Waiver). See 10 CFR 431.201(e)(3)(2005).

• SFC's ECO-i product line is quite similar to that of Fujitsu's VRF system, Mitsubishi's City Multi system and Samsung's DVM system. Realizing these similarities, DOE granted an:

○ Interim waiver to Fujitsu in January 2006 for their AirStage Air Source product.

○ Interim waiver to Samsung Air Conditioning in 2005 for their DVM System.

○ Interim waiver to Mitsubishi for their R–410a City Multi air source product in March 2006.

○ Petition for Waiver to Mitsubishi for their R–22 City Multi air source product in 2004.

• The approval of this waiver and interim waiver is in the best interest of our public/and government initiatives to reduce national energy usage.

It is therefore reasonable for one to believe that SFC's petition will also be granted.

Section 9—Conclusion

It is clear that without the approval of this Petition for Waiver and Application for Interim Waiver that SFC will result in our inability to compete in the United States VRF market, a market in which our company has proven success in many other countries throughout the world. We are pleased to have an opportunity to bring this leading edge technology to the United States market, to not only improve the comfort of Americans, but also to reduce the amount of energy consumed on building cooling and heating.

SFC respectfully requests the Department of Energy to grant our Application for Interim Waiver and our Petition for Waiver from Test Procedure to enable our introduction of our advanced ECO-i products to the U.S. market. Granting these requested waivers will permit us to effectively compete in the marketplace.

Due to our near term introduction of our ECO-i product offering we would greatly appreciate a timely response to this Petition for Waiver from Test Procedure and Application for Interim Waiver.

Should you or any parties have questions related to this Petition for Waiver from Test Procedure and Application for Interim Waiver, please contact Gary Nettinger at 678–384–3115 or Davis Watkins at 678–384–3112.

Sincerely,

Davis Watkins, Vice President; Applied Products Group, Sanyo Fisher Company, 1690 Roberts Blvd., NW., Suite 110, Kennesaw, GA 30144.

[FR Doc. E7–25453 Filed 12–31–07; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2002–0262; FRL–8347–2]

Endosulfan Updated Risk Assessments; Notice of Availability, and Solicitation of Usage Information; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of November 16, 2007 concerning the availability of EPA's updated human health and ecological effects risk assessments for the organochlorine pesticide endosulfan, based in part on data recently submitted by endosulfan registrants as required in the 2002 Reregistration Eligibility Decision (RED). The Agency is seeking comment on these updated assessments, as well as EPA's analysis of endosulfan usage information since the 2002 RED and its preliminary determinations regarding endosulfan's importance to growers and availability of alternatives. This document is extending the comment period from January 16, 2008, to February 19, 2008.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2002–0262 must be received on or before February 19, 2008.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of November 16, 2007.

FOR FURTHER INFORMATION CONTACT: Tracy L. Perry, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0128; e-mail address: *perry.tracy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

When preparing comments follow the procedures and suggestions given in Unit I.B. of the **SUPPLEMENTARY INFORMATION** of the November 16, 2007 **Federal Register** document.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the public docket, please follow the detailed instructions as provided in Unit I.B. of the **SUPPLEMENTARY INFORMATION** of the November 16, 2007 **Federal Register** document. If you have questions,

consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA Taking?

This document extends the public comment period established in the **Federal Register** of November 16, 2007 (72 FR 64624) (FRL–8339–5). In that document, EPA announced the availability of updated risk assessments and usage information, and opened a 60–day public comment period. EPA is hereby extending the comment period, which was set to end on January 16, 2008, to February 19, 2008.

III. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration. Further provisions are made to allow a public comment period. However, the Administrator may extend the comment period if additional time for comment is requested. In this case, the Endosulfan Task Force and a coalition of stakeholders (American Farm Bureau Federation, Arizona Cotton Growers Association, California Cotton Growers Association, California Cotton Ginners Association, California Farm Bureau Federation, California Grape and Tree Fruit League, California Pear Advisory Board, California Specialty Crops Council, Florida Farm Bureau Federation, Michigan Blueberry Growers Association, National Cotton Council, Northwest Horticultural Council, Ohio Farm Bureau Federation, Texas Cotton Ginners' Association, Texas Vegetable Association, U.S. Apple Association) have requested additional time to develop comments. The Agency believes that additional time is warranted.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 20, 2007.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–25277 Filed 12–31–07; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2844]

Petition for Reconsideration of Action in Rulemaking Proceeding

December 20, 2007.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by January 17, 2008. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of Amendment of Parts 1 and 63 of the Commission's Rules (IB Docket No. 04–47).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–25531 Filed 12–31–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comments.

SUMMARY: The OCC and FDIC (Agencies), as part of their continuing effort to reduce paperwork and respondent burden, invite the public and other Federal agencies to comment on proposed revisions to a continuing information collection, as required by the Paperwork Reduction Act of 1995. The Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies are soliciting comments on proposed revisions to the information collections titled: ''Interagency Bank Merger Act Application.'' The General Information and Instructions section has been revised to delete information about the Bank Insurance Fund (BIF), the Savings Association Insurance Fund (SAIF), and the Oakar statutory provisions. In addition, corresponding legal citations on the form to these provisions are being deleted. The Agencies also solicit comment on the renewal without change to the information collections titled: ''Interagency Biographical and Financial Report'' and ''Interagency Notice of Change in Control.'' The OCC solicits comment on the renewal without change to its ''Interagency Notice of Change in Directors or Senior Executive Officers'' information collection. Additionally, the OCC is making other clarifying changes to the Comptroller's Licensing Manual (Manual). The Agencies are also giving notice that the information collection has been submitted to OMB for review.

DATES: You should submit written comments by February 1, 2008.

ADDRESSES: Interested parties are invited to submit comments to any or all of the Agencies and the OMB Desk Officer. All comments, which should refer to the OMB control number, will be shared among the Agencies:

OCC

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mail Stop 1–5, Attention: 1557–0014, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

FDIC

Valerie Best, Supervisory Counsel, (202) 898–3812, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to ''Interagency Bank Merger Act Application,'' the ''Interagency Biographical and Financial Report,'' or the ''Interagency Notice of Change in Control,'' as appropriate.

Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [E-mail address: *comments@fdic.gov*]. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/notices.html* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 4:30 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer for the Agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You may request additional information from:

OCC

Mary Gottlieb, OCC Clearance Officer, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. For subject matter information, you may contact Yoo Jin Na at (202) 874–4604, Licensing Activities, Licensing Department, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

FDIC

Valerie Best, Supervisory Counsel, (202) 898–3812, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Proposal to extend for three years, with revision, the following currently approved collections of information:

OCC's Information Collection Title: Comptroller's Licensing Manual (Manual). The specific portions of the Manual covered by this notice are those that pertain to the ''Business Combinations,'' ''Branches and Relocations,'' ''Capital and Dividends,'' ''Charters,'' ''Change in Bank Control,'' ''Comments to Other Agencies,'' ''General Policies and Procedures,'' ''Investment in Bank Premises,'' ''Investment in Subsidiaries and Equities,'' ''Management Interlocks,'' and ''Public Notice and Comments'' booklets of the Manual and various portions to which the OCC is making technical and clarifying changes.

All Agencies' Report Title and FDIC's Information Collection Title: Interagency Bank Merger Act Application.

All Agencies' Report Titles and FDIC's Information Collection Title: Interagency Biographical and Financial Report and Interagency Notice of Change in Control.

OCC Report Title: Interagency Notice of Change in Directors or Senior Executive Officers.

OMB Numbers:

OCC: 1557–0014.

FDIC: Interagency Bank Merger Act Application, 3064–0015; Interagency Biographical and Financial Report, 3064–0006; Interagency Notice of Change in Control, 3064–0019.

Form Numbers:

OCC: None.

FDIC: Interagency Bank Merger Act Application, 6220/01 and 6220/07; Interagency Notice of Change in Control, Form 6822/01; Interagency Biographical and Financial Report, Form 6200/06.

Affected Public: Individuals or households; Businesses or other for-profit.

Type of Review: Revision or renewal of currently approved collections.

Estimated Number of Respondents:

OCC: Interagency Bank Merger Act Application—152; Interagency Biographical and Financial Report—450; Interagency Notice of Change in Directors or Senior Executive Officers—150; Interagency Notice of Change in Control—13.

FDIC: Interagency Bank Merger Act Application—275; Interagency Biographical and Financial Report—1,769; Interagency Notice of Change in Control—27.

Frequency of Response: On occasion.

Estimated Annual Burden Hours per Response:

OCC: Interagency Bank Merger Act Application—23.5; Interagency Biographical and Financial Report—4; Interagency Notice of Change in Directors or Senior Executive Officers—2; Interagency Notice of Change in Control—30.

FDIC: Interagency Bank Merger Act Application—23.5; Interagency Biographical and Financial Report—4; Interagency Notice of Change in Control—30.

Estimated Total Annual Burden Hours:

OCC: Interagency Bank Merger Act Application—3,572; Interagency Biographical and Financial Report—1,800; Interagency Notice of Change in Directors or Senior Executive Officers—300; Interagency Notice of Change in Control—510. Total: 6,182 burden hours.

FDIC: Interagency Bank Merger Act Application—6,463; Interagency Biographical and Financial Report—7,076; Interagency Notice of Change in Control—810.

Total: 14,349 burden hours.

General Description of Report

These information collections are mandatory. Interagency Bank Merger Act Application: 12 U.S.C. 1828(c), 1815(a), 12 U.S.C. 215, 215a–c. Interagency Biographical and Financial Report: 12 U.S.C. 1814, 1816, 1817(j), 2903, and 4804. Interagency Notice of Change in Directors or Senior Executive Officers: 12 U.S.C. 1831i; Interagency Notice of Change in Control: 12 U.S.C. 1817(j) and 4804. The notices and reporting form are treated as public documents. The organizations and individuals that use the forms may request that all or a portion of the submitted information be kept confidential. In such cases, the burden is on the filer to justify the exemption by demonstrating that disclosure would cause ''substantial competitive harm'' or result in ''an unwarranted invasion of personal privacy'' or would otherwise qualify for an exemption under the Freedom of Information Act (5 U.S.C. 552). The confidentiality status of the information submitted will be judged on a case-by-case basis.

Abstract

The OCC, FDIC, Office of Thrift Supervision (OTS), and the Board of Governors of the Federal Reserve System (Board) each use the Interagency Bank Merger Act Application form to collect information for bank merger proposals that require prior approval under the Bank Merger Act. Prior approval is required for every merger transaction involving affiliated or nonaffiliated institutions and must be sought from the regulatory agency of the depository institution that would survive the proposed transaction. A merger transaction may include a merger, consolidation, assumption of deposit liabilities, or certain asset-transfers between or among two or more institutions. The information collected by the remaining notifications and forms assist the regulatory agency in fulfilling their statutory responsibilities as supervisors. The regulatory agency uses the information to evaluate the controlling owners, senior officers, and directors of the insured depository institutions subject to their oversight.

Current Actions

This submission covers a revision to the Agencies' Interagency Bank Merger Act Application. The General Information and Instructions section of the application would be revised based

on the passage of the Federal Deposit Insurance Reform Act of 2005, enacted on February 8, 2006. Provisions of the legislation directed the FDIC to merge the Bank Insurance Fund and the Savings Association Insurance Fund to form the new Deposit Insurance Fund, which subsequently merged on March 31, 2006. The formation of the single insurance fund eliminated the need for two types of insurance-related applications that existed to allow certain depository institutions to convert their coverage from one insurance fund to another. Accordingly, references in the Instructions to the previously required applications have been deleted. Also, the legal citations on page 1 of the application form, that correspond to the previously required application have been deleted (previously 12 U.S.C. 1815(d)(2), 1815(d)(3)). There are no other proposed changes to this information collection. Additionally, each of the Agencies proposes to renew two other forms, Interagency Biographical and Financial Report and the Interagency Notice of Change in Control, with no changes. The OCC proposes to renew, with no changes, one additional form, the Interagency Notice of Change in Directors or Senior Executive Officers. The Agencies need the information from these forms to ensure that the proposed transactions are permissible under law and regulation and are consistent with safe and sound banking practices. The Board published a separate **Federal Register** notice (72 FR 39428 (July 18, 2007)) and the OTS plans to publish a notice requesting public comment on these revisions.

Comments

The Agencies issued a 60-day notice seeking comment on the collection on August 8, 2007 (72 FR 44220). No comments were received.

Written comments continue to be invited on:

a. Whether the information collection is necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

b. The accuracy of the Agencies' estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 14, 2007.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Dated at Washington, DC, this 19th day of December, 2007.

Valerie J. Best,

Assistant Executive Secretary.

FDIC: 6714–01–P (50%)

[FR Doc. E7–25463 Filed 12–31–07; 8:45 am]

BILLING CODE 4810–33–P (50%); 6714–01–P (50%)

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 17, 2008.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Nancy C. Wilson, Memphis, Tennessee, individually and as a member of a control group acting in concert, the group consisting of Nancy C. Wilson, The Paul Nelms Family Trust, Nancy Wilson as trustee, Jessica Wilson, Stephanie Macintosh Shy, all of Memphis, Tennessee; Charles D. Newell, Jr., Germantown, Tennessee; Michael B. Baird, Cordova, Tennessee; Jon A. Reeves, Olive Branch, Mississippi; Peter T. Hodo, West Point, Mississippi; and Johnny Ponder, Collierville, Tennessee; to acquire control of Merchants & Planters Bancshares, Inc., and thereby indirectly acquire voting shares of Merchants & Planters Bank, both of Toone, Tennessee.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Patricia Childress, Visalia, California and Carol Bates, Porterville, California, to acquire voting shares of Sierra Bancorp, and thereby indirectly acquire voting shares of Bank of The Sierra, both of Porterville, California.

Board of Governors of the Federal Reserve System, December 27, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–25471 Filed 12–31–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days. *Proposed Project:* Evaluation of

the ''I Can Do It, You Can Do It'' Health Promotion Program for Children and Youth with Disabilities—New—Office on Disability (OD).

Abstract: The Department of Health and Human Services' Office on Disability (OD) oversees the implementation and coordination of disability programs, policies, and special initiatives pertaining to the over 54 million persons with disabilities in the United States. As part of these efforts, the OD encourages youth with physical and cognitive disabilities to adopt a healthier life style that includes good nutrition and increased physical activity. ''I Can Do it, You Can Do It'' is a health promotion intervention program for children and youth between the ages of 10 and 21 with disabilities that employs a one-on-one mentoring approach to change health behaviors. The program is implemented by sponsoring organizations who work with children and youth with disabilities. The OD will evaluate the effectiveness of the program.

The evaluation will be completed over a two-year period. Respondents will be children and youth with disabilities who are participating in the program. Mentors who work with the participants/mentees will complete a post-program survey. Coordinators from the sponsoring organizations will complete a process evaluation survey. Results will be used to determine if the program has been successful, to report progress, and to make revisions for future administration of the program. There are no costs to respondents except their time to participate in the surveys.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response (in hours)	Total burden hours
Registration Form	Program Participant/Mentee	660	1	8/60	88
Goal Setting Worksheet	Program Participant/Mentee	610	1	7/60	71
Mentor Registration Form	Mentor	450	1	10/60	75
Pre-Test Survey	Program Participant/Mentee	560	1	19/60	177
Weekly Check-In Form	Program Participant/Mentee	560	8	7/60	522
First Post-Test Survey	Program Participant/Mentee	510	1	18/60	153
Second Post-Test Survey	Program Participant/Mentee	460	1	18/60	138
Mentor Post Assessment	Mentor	450	1	15/60	112
Agency Coordinator Survey	Agency Coordinators	6	1	45/60	4.5
Total					1,340.5

Dated: December 19, 2007.

Terry Nicolosi,

Office of the Secretary, Director, Office of Resources Management.

[FR Doc. E7–25428 Filed 12–31–07; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information and Comments on Research That Involves Adult Individuals With Impaired Decision-Making Capacity

AGENCY: Office for Human Research Protections, Office of Public Health and Science, Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: On September 5, 2007, the Office for Human Research Protections, Office of Public Health and Science, Office of the Secretary, Department of Health and Human Services (HHS) issued a notice in the **Federal Register** (Vol. 72, No. 171, pages 50966—50970) seeking information and comments about whether guidance or additional regulations are needed to adequately protect adult individuals with impaired decision-making capacity who are potential subjects in research. A 90-day comment period was established upon publication of that notice.

The purpose of this notice is to inform all interested parties that the comment period originally identified in the September 5, 2007 **Federal Register** has been extended for forty one days, in order to maximize the opportunity for interested individuals and organizations to provide information and comments to HHS on this topic.

DATES: The closing date for the comment period will now be January 14, 2008.

ADDRESSES: Submit written comments to ''Request for Information on Research That Involves Adult Individuals With Impaired Decision-Making Capacity'', Office for Human Research Protections, The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Comments also may be sent via e-mail to *impairedcapacityohrp@hhs.gov*, or via facsimile at 301–402–2071. Comments received within the comment period, including any personal information provided, will be made available to the public upon request.

SUPPLEMENTARY INFORMATION: A copy of the September 5, 2007 RFI can be accessed at: *http://www.hhs.gov/ohrp/documents/20070905.htm* or *http://www.hhs.gov/ohrp/documents/20070905.pdf*.

Dated: December 26, 2007.

Ivor A. Pritchard,

Acting Director, Office for Human Research Protections.

[FR Doc. E7–25460 Filed 12–31–07; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): National Institute for Occupational Safety and Health (NIOSH): Occupational Safety and Health Training Project Grants, Program Announcement (PA) PAR06–484

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 8:30 a.m.–5:30 p.m., February 20, 2008 (Closed).

Place: Marriott Marina del Rey, 4100 Admiralty Way, Marian del Rey, CA 90292.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of ''National Institute for Occupational Safety and Health (NIOSH): Occupational Safety and Health Training Project Grants, PA PAR06–484.''

Contact Person for More Information: Charles N. Rafferty, PhD, Assistant Director for Review and Policy, Office of Extramural Programs, Office of Extramural Coordination and Special Projects, NIOSH, CDC, 1600 Clifton Road, NE., Mailstop E74, Atlanta, GA 30333 Telephone: (404) 498–2530.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 21, 2007.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–25544 Filed 12–31–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee (MSHRAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Time and Date:
8:45 a.m.—5:15 p.m., January 22, 2008.
8:30 a.m.—3:45 p.m., January 23, 2008.

Place: Hilton Garden Inn Pittsburgh/Southpointe, 1000 Corporate Drive, Canonsburg, PA 15317, telephone (724) 743–5000, fax (724) 743–5010.

Status: The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with providing advice to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NIOSH, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), Section 102(b)(2).

Matters To Be Discussed: The meeting will focus on Communications and Tracking, update on Refuge Alternatives Activities, Mine Ground Control Research, Dynamic Failures Proposal, NAS Review and Planned Actions, Safety Culture Pilot Project and Coal Workers Pneumoconiosis Research. The agenda will also include an update report from the Associate Director for Mining. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Jeffery L. Kohler, Ph.D., Executive Secretary, MSHRAC, NIOSH, CDC, 626 Cochrans Mill Road, Pittsburgh, PA 15236, telephone (412) 386–5301, fax (412) 386–5300. The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 21, 2007.

Elaine Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. E7–25509 Filed 12–31–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Center for Food Safety and Applied Nutrition; Statement of Organization, Functions, and Delegations of Authority

Part D, Food and Drug Administration, Chapter DB, Office of Operations, Center for Food Safety and Applied Nutrition (DBF), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 60 FR 56005, November 9, 1995; 64 FR 36361, July 6, 1999; and in pertinent part at 57 FR 54239) is amended to reflect the restructuring of the Center for Food Safety and Applied Nutrition (CFSAN), Office of Operations (OO), Food and Drug Administration (FDA) as follows:

I. Under Chapter DB, Office of Operations, delete in its entirety, the ''Center for Food Safety and Applied Nutrition (DBF).

II. Establish a new Chapter DH, Center for Food Safety and Applied Nutrition (DH), under Part D to read as follows:

DF.10 Organization. The Center for Food Safety and Applied Nutrition, FDA is headed by the Director, Food Safety and Applied Nutrition, and includes the following organizational units:

Office of the Center Director (DHA)
Office of Management Systems (DHB)
Office of Food Defense, Communication and Emergency Response (DHC)
Office of Food Safety (DHD)
Office of Cosmetics and Colors (DHE)
Office of Regulatory Science (DHF)
Office of Food Additive Safety (DHG)
Office of Compliance (DHH)
Office of Applied Research and Safety Assessment (DHI)
Office of Regulations, Policy and Social Sciences (DHJ)
Office of Nutrition, Labeling, and Dietary Supplements (DHK)

DF.20 Functions.

A. OFFICE OF THE CENTER DIRECTOR (DHA). The Office of the Center Director (OCD):

Provides leadership and direction for all Center activities and coordinates programs with other Agency, Department and government agencies.

Plans, administers, coordinates, evaluates and promulgates overall Center scientific, regulatory, compliance, enforcement and management programs, policies and plans.

Provides leadership and direction for Center management, planning, and evaluation systems to ensure optimum utilization of personnel, financial resources, and facilities.

Establishes and manages a program to maintain the highest level of quality and integrity for all Center laboratory studies and the processing of regulatory samples, and ensures that all Center laboratory studies subject to FDA's Good Laboratory Practice regulations are conducted in compliance with them.

Coordinates and monitors the Center's overall research portfolio, including all research-related activities and inquiries and the development of strategic research program plans.

B. SENIOR SCIENCE ADVISOR STAFF (DHA1). The Senior Science Advisor Staff (SSAS):

Provides advice to the Center Director and Deputy Directors on issues related to the Center's research portfolio, facilities and equipment.

Represents the Center and Agency in scientific and other professional forums, including international forums, on issues related to food laws, regulations, standards and science and policies.

Provides leadership for the development of short-, medium- and long-term strategic research program plans.

Provides advice, consultation, and management oversight to appropriate representatives associated with partnerships with academia and other consortia.

Fosters partnerships and effective communication with academia, private industry, trade associations, public sector groups, governmental agencies, commodity groups, and professional organizations.

C. INTERNATIONAL AFFAIRS STAFF (DHA2). The International Affairs Staff (IAS):

Provides advice to the Center Director and Deputy Directors on issues related to international policy and direction.

Provides leadership on development of the Center's policies that impact on international and/or trade issues.

Represents the Center and Agency in international forums on issues related to international harmonization of food laws, regulations, standards and science, and policies.

Provides expertise and oversight over international trade negotiations pertaining to foods and cosmetics and the implementation of the agreements that emerge from those negotiations, including management of any trade disputes.

Coordinates activities between the Center and other Federal agencies, foreign competent authorities, and relevant stakeholders on issues having international components.

Coordinates international technical assistance and training programs.

D. EXECUTIVE OPERATIONS STAFF (DHA3). The Executive Operations Staff (EOS):

Provides support to the Center Director and Deputy Directors, including the coordination and preparation of briefing materials and background information for meetings, responses to outside inquiries, and maintenance and control of the Center Director's working files.

Manages the Center's Freedom of Information Act activities, coordinating responses with other Center technical, regulatory, and policy units as well as developing direct responses. Provides correspondence control for the Center and controls and processes all agency public correspondence directed to the Center Director. Develops and operates tracking systems designed to identify and resolve early warnings and bottleneck problems with executive correspondence.

Coordinates the Center's communications with the Agency, Department, and the other federal government agencies.

Manages all Congressional activities including hearings, briefings, and inquiries (except for legislation).

Acts as the focal point for all activities with respect to the Government Accountability Office (GAO) and the Office of the Inspector General.

E. OFFICE OF MANAGEMENT SYSTEMS (DHB). The Office of Management Systems (OMS):

Advises the Center Director on administrative policies and guidelines and scientific and technical information systems.

Plans and directs all Center operations related to program planning, budget, financial, and security management, and laboratory safety and health.

Performs management studies and evaluations, as necessary, throughout the Center.

Provides technical support and building operations support management to the Center in the areas of supply, equipment, space, communications, printing, reproduction, mail, contracts and grants, and awards.

Represents the Center's information technology (IT) needs to Shared Services and the Chief Information Officer (CIO). Provides support to critical in-house data systems.

F. OFFICE OF FOOD DEFENSE, COMMUNICATION AND EMERGENCY REPONSE (DHC). The Office of Food Defense, Communication and Emergency Response (OFDCER):

Provides Center leadership for food defense and counterterrorism activities in relation to that segment of the U.S. food supply that is regulated by the Food and Drug Administration (FDA). Serves as FDA's lead for directing, developing, and coordinating high quality outreach and education activities (in collaboration with Center Program offices) and as a resource to all stakeholders (e.g., consumers, industry, states, and other Federal partners) in relation to food safety, food labeling, and food defense.

Leads the Center in coordinating, directing, and assisting other agency units with foodborne outbreak investigations and coordination of other emergency activities involving food, dietary supplements, and cosmetics.

Provides direction for strengthening systems for conduct and coordination of risk analysis activities and related research associated with national and international food safety and food defense issues.

Assists the Center's Chief Medical Officer (CMO) as an expert for the Center in public health medicine, including Human Subject Protection (HSP) and Health Hazard Evaluations (HHE's).

Provides statistical and epidemiological support for Center and field research, extramural and regulatory programs.

G. OFFICE OF FOOD SAFETY (DHD). The Office of Food Safety (OFS):

Develops and implements policies, regulations, and guidelines related to food safety. Conducts food safety research related to chemical or microbial contamination.

Administers the federal portion of the Federal/State cooperative programs. Provides toxicological evaluations and quantitative risk assessments related to the presence of industrial chemicals, process induced toxicants and toxic elements in food.

Serves as the principal Agency liaison on food programs and policies with industry, Federal, State, foreign, and other organizations.

Provides expertise in acidified and low acid food technologies, including the registration and evaluation of filed processes.

Maintains the Interstate Certified Shellfish Shippers List and the Interstate Milk Shippers List.

Serves as Agency liaison with State partners in administering the Federal portion of the federal/state cooperative retail food program.

Develops and promotes the adoption and implementation of the FDA Food Code, the National Retail Food Regulatory Program Standards and related agency policy for sound public health practices.

Provides technical support and outreach to FDA staff and other Federal, State and local officials on the Food Code and other agency guidance on retail food protection.

H. OFFICE OF COSMETICS AND COLORS (DHE). The Office of Cosmetics and Colors (OCAC):

Develops guidelines, regulations, and policies for cosmetics and color additives. Communicates policy, guidance, and other information on cosmetics and color additives to the public, affected industry, and other stakeholders including international regulatory bodies.

Provides expert scientific and technical advice and support on cosmetic products and ingredients and color additives to other FDA units and other Federal, State, and local authorities.

Administers the Color Certification program, including laboratory testing and methods research.

Administers the Voluntary Cosmetic Registration Program.

Provides leadership and works closely with other Agency units in the area of nanotechnology.

I. OFFICE OF REGULATORY SCIENCE (DHF). The Office of Regulatory Science (ORS):

Conducts laboratory science and research that support the FDA regulatory agenda.

Develops laboratory-based methods to support regulations and related policy developments.

Provides technical support and expert advice on scientific issues related to policy and regulations.

Originates, plans, and conducts research in the areas of food processing and packaging, food chemistry, food toxicants, food microbiology and cosmetics.

Reviews regulatory actions for adequacy of evidence and accuracy of the science and technical procedures and findings.

Provides technical information and assistance with laboratory-based methods and procedures to foreign governments and visitors.

J. OFFICE OF FOOD ADDITIVE SAFETY (DHG). The Office of Food Additive Safety (OFAS):

Serves as the Center focal point for scientific and policy support for the development of Agency-initiated regulations on matters pertaining to the provisions of the food and color additive sections of the Federal Food, Drug, and Cosmetic Act.

Manages the Center's petition review processes (both those conducted in-house and under extramural contract) for food and color additives, and consultation/notification processes for GRAS (Generally Recognized As Safe) substances, food contact substances, and foods and food ingredients derived from recombinant DNA biotechnology. Evaluates safety information, compiles the administrative record supporting actions on petitions and other agency actions, and prepares **Federal Register** documents relating to petitions.

Prepares and/or reviews documentation required by the Center to implement the National Environmental Policy Act (NEPA). Coordinates the Center review of documents prepared under NEPA by other Federal agencies.

Serves as the principal Agency liaison on safety testing methodologies and protocol standards needed to evaluate the safety of food ingredients and on other aspects of regulatory decisions.

Develops compliance policy, position papers, procedural regulations, regulatory guidelines, and advisory opinions on issues related to the safe uses of food additives, food contact substances, color additives, GRAS substances, biotechnology derived foods, and prior sanctioned substances.

Responds to stakeholder inquiries and processes Freedom of Information requests in a timely and efficient manner. Consults with Center and other FDA laboratories regarding research relevant to the regulation of food and color additives and food ingredients.

Manages the Agency's review and monitoring of identity, probable human exposure to, and toxicity information on food and color additives, food contact substances, and GRAS substances in current use. Recommends enforcement action or regulatory change as needed. Provides expert scientific and technical advice to other Office, Center, and Agency components as needed.

Provides evaluation and participates in bioresearch monitoring of non-clinical laboratory studies and facilities to assure quality and integrity of data submitted to the Agency in accordance with good laboratory practices

K. OFFICE OF COMPLIANCE (DHH). The Office of Compliance (OC):

Serves as the primary contact between the Center and FDA's field organization, including the Field Food Committee.

Has primary responsibility for management of compliance programs, field assignments, and work plans and maintains the center-wide compliance management and reference systems.

Initiates and/or coordinates the planning, development, publication and promotion of field guidance documents for CFSAN-regulated food and cosmetic products to implement sound public health practices, food safety/security interventions, compliance/enforcement strategies, and regulatory programs; provides information, training and technical assistance to implement development of Center guidance and regulations.

Reviews proposed regulatory actions and recalls for adequacy of evidence and consistency across programs. Oversees the development of compliance and enforcement strategies for emerging compliance challenges.

Monitors and mines information from internal and external sources to identify trends or emerging compliance and enforcement-related issues that may influence the Center's area of regulatory responsibility. Provides data and other information on field accomplishments to support the Center's evaluation of programs and assignments, development of new assignments, assessment of the industry or any other relevant Agency purpose.

Oversees, monitors and evaluates the food facility registration data base.

Plans and develops approaches to administer regulatory responsibilities in the Interstate Travel Program and provides information, problem-solving and technical assistance to Agency and external organizations within this program.

L. OFFICE OF APPLIED RESEARCH AND SAFETY ASSESSMENT (DHI). The Office of Applied Research and Safety Assessment (OARSA):

Establishes and conducts a cohesive mission-relevant research program in the areas of toxicology, microbiology and molecular biology that will ensure the safety of the U.S. food supply and the establishment of sound counterterrorism measures.

Provides Center and Agency leadership in reproductive toxicology, neuro/behavioral toxicology, immunotoxicology, in vitro toxicology with special emphasis on hepatotoxicity, virulence assessment, immunobiology, microbial genetics and molecular virology.

Recommends, develops, and conducts the Center's research program goals and priorities on food safety threat agents, safety and health hazards to foods, nutritional supplements, chemical contaminants, natural toxicants, and metabolities.

Serves as the Center's principal research liaison with other Agency units and with other organizations outside the Agency. Initiates and coordinates collaborative studies with Center stakeholders and coordinates development of long-term collaborative research planning with the Center, other Agency units, academic, and research components to achieve food safety and food defense.

Provides support to the national toxicological program with planning and implementation of sub-chronic and chronic toxicological evaluations emphasizing dose response relationships. Provides expert scientific direction, guidance and support to the Center's regulatory and compliance programs and provides expertise in both food safety and food defense.

M. OFFICE OF REGULATIONS, POLICY, AND SOCIAL SCIENCES (DHJ). Office of Regulations, Policy, and Social Sciences (ORPSS):

Coordinates the development of all CFSAN regulations and guidance documents, and reviews and clears for CFSAN draft regulations and guidance documents developed by CFSAN, other Centers in FDA, or by other agencies.

Resolves policy issues involving Center-regulated food or cosmetic products in collaboration with the Center Director, Deputy Directors and other senior managers.

Provides economic analyses and conducts consumer studies to provide information about the impact and/or effectiveness of various options; these analyses and studies are used by CFSAN managers throughout the decision-making and evaluation processes.

Serves as the Center focal point and provides a centralized monitoring, coordinating, and advisory function for the Center and U.S. government on policies involving sensitive, controversial, and complex food issues,

including policies involving food derived from biotechnology.

Advises Center officials on regulatory approaches and manages the development of periodic plans for the Center's regulation development activities.

Develops legislative proposals related to food and cosmetic safety and defense; coordinates the Center's review of bills and proposed legislation, upon request; and coordinates the Center's technical assistance to Congressional or FDA Office of Legislation staff developing bills related to food and cosmetics, upon request.

Manages the Center's compliance with the Information Quality Act, including responses to request for correction and reconsideration submitted under the Act.

Advises Center staff concerning the administrative procedures for rulemaking, guidelines, guidance documents, and other policy documents, hearings and delegations of authority.

Leads the Center's evaluation of existing regulations to determine whether they are efficiently or effectively accomplishing their intended purpose.

Provides Center-level leadership and coordination regarding briefings with other parts of the Agency or Federal Government with clearance responsibility regarding CFSAN regulations and guidance documents, and other CFSAN documents subject to the Paperwork Reduction Act, in coordination with the Executive Operations Staff.

Directs and manages Center programs involving the use of external scientific advisors, consultants, and committees.

Counsels and coordinates with Center managers on the use of external scientific experts and resources.

N. OFFICE OF NUTRITION, LABELING, AND DIETARY SUPPLEMENTS (DHK). The Office of Nutrition, Labeling, and Dietary Supplements (ONLDS):

Primary responsibility for policy development and management of food and nutrition labeling, food standards, conventional foods, dietary supplements, and special nutritional (including infant formula and medical foods) food.

Provides expert advice to the Center Director, other Deputy Directors, and other senior managers, and directs major Agency and Department nutrition and labeling initiatives and is the Delegate to national and international forums and conferences.

Primary responsibility for policy and regulatory development and management of the food labeling program, including Nutrition Labeling and Education Act, Food Allergen Labeling and Consumer Protection Act and other Federal Food, Drug, and Cosmetic Act and Fair Packaging and Labeling Act labeling requirements.

Provides scientific and technical review of and response to petitions and notifications related to all aspects of conventional food labeling. With the Office of Compliance, determines compliance with existing food standards and common or usual name regulations and issues temporary marketing permits to allow manufacturers to test market new foods. In addition, conducts scientific and technical review of enforcement and compliance materials including inspection reports, analytical reports and other pertinent records, and provides policy decisions on misbranding charges for all domestic and import actions, including infant formula and medical food manufacturers.

Provides expert guidance for other Agency units and Federal and State officials and industry concerning regulatory requirements and compliance policies on food labeling (including infant formula and medical foods) and reviews proposed enforcement/compliance actions referred by other agency units.

Provides expert technical advice for participation in international forums.

Reviews food product labeling (including infant formula, medical foods and nutrition labels) for adherence to regulations and appropriateness of claims and manages the Small Business Nutrition Labeling Exemption Notification Program.

Provides scientific review and analysis of policies, regulations, research priorities, position papers, and advisory opinions on issues related to nutrition and nutrition labeling, and dietary guidance recommendations, and related nutrition science issues.

Responsible for scientific and regulatory review of health claim petitions, qualified health claim petitions, nutrient content claim petitions, and FDA Modernization Act notifications for health claims and nutrient content claims.

Provides expert advice and assistance to key officials and coordinates with other domestic and international scientific bodies on efforts related to nutrition and health.

Identifies program priorities for, provides content design input to, and analysis of large-scale databases of food consumption, food composition, food ingredients, sales of processed packaged food products and product label information. Develops methods for monitoring US populations and special subgroups relative to use and safety of conventional foods and dietary supplements.

Provides management and scientific review on issues related to infant formula, medical foods, and dietary supplements including petitions and notifications, and provides advice to key Agency components as well as international bodies.

Responsible for the development of regulations, guidance, policy, programs, position papers and advisory opinions, and recommends research priorities for the management of the dietary supplement program, which includes safety assessments for the New Dietary Ingredient Notification Program, structure-function notifications, Certificates of Export, safety assessment for dietary supplement policy, responses to petitions and industry-related notifications, post-market adverse event evaluations, and issues related to dietary supplement safety and nutrition.

III. Delegations of Authority. Pending further delegation, directives, or orders by the Commissioner of the Food and Drugs, all delegations or re-delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: December 20, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. 07–6257 Filed 12–31–07; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0492]

Guidance for Industry and Food and Drug Administration; Interactive Review for Medical Device Submissions: 510(k)s, Original PMAs, PMA Supplements, Original BLAs, and BLA Supplements; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Interactive Review for Medical Device Submissions: 510(k)s, Original PMAs, PMA Supplements, Original BLAs, and BLA Supplements.'' The purpose of this guidance document is to recommend an

interactive premarket review process for these submissions that is designed to expedite FDA's review of device applications while continuing to assure device safety and effectiveness, in accordance with the goals of the Food and Drug Administration Amendments Act of 2007 (FDAAA).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidelines are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Interactive Review for Medical Device Submissions: 510(k)s, Original PMAs, PMA Supplements, Original BLAs, and BLA Supplements'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to either *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Samie Allen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4013.

SUPPLEMENTARY INFORMATION:

I. Background

In the letter from the Secretary of Health and Human Services to the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate setting out the goals of the Medical Device User Fee Amendments of 2007 (MDUFA) (see section 201(c) of FDAAA), dated September 27, 2007, FDA committed to developing a guidance document that describes an interactive review process between FDA and industry for specific medical device premarket submissions. While FDA committed to developing an interactive review process only for premarket notification submissions (510(k)s), premarket approval applications (PMAs), and PMA supplements, the agency believes that medical device Biologic License Applications (BLAs) could also benefit from such a process. Therefore, the guidance document also applies to medical device BLAs and BLA supplements.

The goal of the interactive review process is to improve the timeliness of the review process for 510(k)s, PMAs, PMA supplements, BLAs and BLA supplements. FDA expects that the interactive review process will result in prompter approvals and clearances of medical devices and thereby improve the public health. FDA intends to reassess the interactive review process on a regular basis to determine whether it is meeting its intended objectives. When necessary, changes will be implemented to improve the efficiency of this process.

FDA is making this guidance document immediately in effect because prior public participation was not feasible or appropriate. In the letter described in section 201(c) of FDAAA that sets out the goals of MDUFA, FDA committed to developing, within 3 months of the date of FDAAA's enactment, a guidance document that describes an interactive review process. The interactive review process supports a less burdensome approach to the premarket review process that is consistent with public health.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the interactive review process for premarket medical device submissions. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. To receive ''Interactive Review for Medical Device Submissions: 510(k)s, Original PMAs, PMA Supplements, Original BLAs, and BLA Supplements,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1655 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions [including lists of approved applications and manufacturers' addresses], small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. §§ 3501–3520) (the PRA). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subpart B, have been approved under OMB control number 0910–0231; and the collections of information in 21 CFR part 601, subpart A, have been approved under OMB control number 0910–0338.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that in January 2008, the FDA website is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

Dated: December 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–6268 Filed 12–27–07; 3:08 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D– 0496]

Draft Guidance for Industry on Questions and Answers Regarding the Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Questions and Answers Regarding the Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.'' This draft guidance is intended to assist industry in complying with the labeling requirements for nonprescription (over-the-counter (OTC)) human drugs marketed without an approved application established by the Dietary Supplement and Nonprescription Drug Consumer Protection Act. Separate guidance, issued by the Center for Food Safety and Applied Nutrition on labeling requirements for dietary supplements, is announced elsewhere in this issue of the **Federal Register**.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance, including comments regarding proposed collection of information, by March 3, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, addressStreet5630 Fishers Lane, rm. 1061, placeCityRockville, StateMD PostalCode20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Walter Ellenberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 5488, Silver Spring, MD 20993, 301–796–2090.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled ''Questions and Answers Regarding the Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.'' On December 22, 2006, the President signed into law the Dietary Supplement and Nonprescription Drug Consumer Protection Act (Public Law 109–462, 120 Stat. 3469). This law amends the Federal Food, Drug, and Cosmetic Act (the act) with respect to serious adverse event reporting for dietary supplements and nonprescription drugs marketed without an approved application. The draft guidance document contains questions and answers relating to the new labeling requirements under Public Law 109–462 for OTC drugs marketed without an approved application.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that in January 2008, the FDA Web site is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth as follows.

With respect to the following collection of information, FDA invites comment on the following: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Labeling Requirements and Recommendations under the Dietary Supplement and Nonprescription Drug Consumer Protection Act for Nonprescription Drug Products Marketed Without an Approved Application.

Description of Respondents: Respondents to this collection of information are manufacturers, packers, and distributors whose name (under section 502(b)(1) of the act) appears on the label of a nonprescription drug marketed in the United States.

Burden Estimate: FDA is requesting public comment on the estimated one-time reporting burden from these respondents, as required by Public Law 109–462 and described in the draft guidance. This guidance document discusses the labeling requirements of section 502(x) of the act (21 U.S.C. 352(x)), which was added by Public Law 109–462.

Section 502(x) of the act requires the label of an OTC drug product marketed without an approved application in the United States to include a domestic address or domestic phone number through which the responsible person may receive a report of a serious adverse event associated with the product. If the label does not include the required domestic address or phone number, the drug product is misbranded. When the responsible person chooses to provide a domestic address (rather than a phone number) for adverse event reporting, FDA concludes that the statute requires the product label to bear a full U.S. mailing address that includes the street address or P.O. Box, city, state, and zip code of the responsible person (i.e., the manufacturer, packer, distributor, or retailer whose name appears on the label). This labeling requirement helps to ensure that any mailed adverse event report will reach the responsible person. Similarly, when the responsible person chooses to provide a domestic phone number for adverse event reporting, FDA concludes that the statute requires the phone number on the product label to include the area code. Without the area code, the phone number is incomplete and does not serve its intended purpose of enabling the consumer to contact the responsible person to report a serious adverse event.

In addition to discussing the statutory requirement that labels include a domestic address or a domestic phone number, the draft guidance includes recommendations about the location of this information on the label and the recommendation that the label make clear the purpose of this information.

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

TABLE 1.—ESTIMATED ONE-TIME REPORTING BURDEN[1]

	No. of Respondents	Frequency per Response	Total Responses	Hours Per Response	Total Hours
Domestic address or phone number labeling requirement (21 U.S.C. 502(x)) and recommendation to clarify its purpose	200	500	100,000	4	400,000

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

As indicated in Table 1 of this document, we estimate that approximately 200 manufacturers will revise approximately 100,000 labels total to add a full domestic address and a domestic telephone number, and should they choose to adopt the draft guidance's recommendation, to add a statement identifying the purpose of the domestic address or telephone number. We specifically request comments on these estimates. FDA believes that designing the label change should not take longer than 4 hours per label. Automated printing of the labels should only require a few seconds per label.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance, including comments regarding proposed collection of information. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: December 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–6267 Filed 12–27–07; 3:08 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0491]

Draft Guidance for Industry: Questions and Answers Regarding the Labeling of Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Questions and Answers Regarding the Labeling of Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.'' This draft guidance is intended to assist the dietary supplement industry in complying with the labeling requirements prescribed for dietary supplement manufacturers, packers, and distributors by the Dietary Supplement and Nonprescription Drug Consumer Protection Act (the DSNDCPA). Separate guidance, issued by the Center for Drug Evaluation and Research on labeling requirements for nonprescription (over-the-counter) human drugs marketed without an approved application, is announced elsewhere in this issue of the **Federal Register**.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by March 3, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Nutritional Products, Labeling, and Dietary Supplements (HFS–800), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist the office in processing your request, or include a fax number to which the draft guidance may be sent. See the **SUPPLEMENTARY**

INFORMATION section for electronic access to the draft guidance.

Submit written comments on the draft guidance, including comments regarding proposed collection of information, to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to either *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Vasilios Frankos, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2375.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled ''Guidance for Industry: Questions and Answers Regarding the Labeling of Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.'' On December 22, 2006, the President signed into law the DSNDCPA (Public Law 109–462, 120 Stat. 3469). This law amends the Federal Food, Drug, and Cosmetic Act (the act) with respect to serious adverse event reporting for dietary supplements and non-prescription drugs marketed without an approved application. The draft guidance document contains questions and answers relating to the new labeling requirements for dietary supplements under the DSNDCPA.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comment on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Dietary Supplement Labeling Requirements and Recommendations under the Dietary Supplement and Nonprescription Drug Consumer Protection Act.

Description of Respondents: Respondents to this collection of information are manufacturers, packers, and distributors of dietary supplements marketed in the United States.

The draft guidance is intended to assist the dietary supplement industry in complying with the dietary supplement labeling requirements of section 403(y) of the act (21 U.S.C. 343(y)), which was added by the DSNDCPA.

Section 403(y) of the act requires the label of a dietary supplement being marketed in the United States to include a domestic address or domestic telephone number through which the responsible person may receive a report of a serious adverse event with such dietary supplement. If the label does not include the required domestic address or telephone number, the dietary supplement is misbranded. When the responsible person chooses to provide a domestic address (rather than a telephone number) for adverse event reporting, FDA concludes that the statute requires the product label to bear a full U.S. mailing address that includes the street address or P.O. box, city, state, and zip code of the responsible person (i.e., the manufacturer, packer, distributor, or retailer identified on the dietary supplement label). This labeling requirement helps to ensure that any mailed adverse event report will reach the responsible person. Similarly, when the responsible person chooses to provide a domestic telephone number for adverse event reporting, FDA concludes that the statute requires the telephone number on the product label to include the area code. Without the area code, the telephone number is incomplete and does not serve its intended purpose of enabling the consumer to contact the responsible person to report a serious adverse event.

In addition to discussing the statutory requirement for dietary supplement labels to include a domestic address or a domestic telephone number, the draft guidance recommends that the label bear a clear, prominent statement informing consumers that the domestic address or telephone number is for reporting serious adverse events associated with use of the product.

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

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Domestic address or telephone number labeling requirement (21 U.S.C. 343(y))	1,460	15.4616	22,574	4	90,296
FDA recommendation for label statement explaining purpose of domestic address or telephone number	1,460	15.4616	22,574	4	90,296

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Total Burden Hours					180,592

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

Using FDA's Labeling Cost Model, FDA estimates that there are 22,574 stockkeeping units (SKUs) for unique dietary supplement pills and liquids for which labels would have to bear the complete domestic address or domestic telephone number of the responsible person for that supplement. This estimate of the number of SKUs for dietary supplements is an underestimate of the total number of dietary supplements on the market because dietary supplements are marketed in a variety of forms other than pills and liquids. However, this is the most comprehensive estimate available to FDA. FDA requests comments on the total number of SKUs for dietary supplements that are marketed in the United States.

In the economic impact analysis of the Dietary Supplement Good Manufacturing Practices final rule (the GMP final rule) FDA estimated that there were about 1,460 dietary supplement manufacturers, re-packagers, re-labelers, and holders of dietary supplements (June 25, 2007; 72 FR 34752 at 34920). Assuming the 22,574 SKUs are split equally among the firms, then each firm would be responsible for updating about 15 SKUs. The estimate of the number of manufacturers, re-packagers, re-labelers, and holders of dietary supplements from the GMP final rule is FDA's best estimate of the number of firms that are ''responsible persons'' who must comply with the new labeling requirement added by the DSNDCPA; however, it is not a precise estimate because the number of dietary supplement establishments covered by the GMP final rule is likely to be larger than the number of ''responsible persons,'' where a ''responsible person'' is a dietary supplement manufacturer, packer, or distributor whose name is listed on the label of a dietary supplement associated with a serious adverse event (see section 761(b)(1) of the act (21 U.S.C. 379aa–1(b)(1)). Thus, FDA's estimate for number of respondents in table 1 of this document may be over inclusive. FDA requests comments on the number of firms that would be subject to the labeling requirements of the DSNDCPA.

FDA does not know how many of the 22,574 dietary supplement SKUs would have to undergo a label change to include the complete domestic address or domestic telephone number of the responsible person as required by the DSNDCPA. Based on the agency's experience with regulating dietary supplements, FDA believes that some dietary supplement labels (SKUs) already have the full domestic address or telephone number of the responsible person printed on the label and thus will not need to be redesigned to comply with section 403(y) of the act. The agency does not have any information on which to base a quantitative estimate of the number of labels that already meet the requirements of section 403(y) of the act, however. Therefore, FDA is assuming conservatively that all labels will need to be redesigned.

Assuming further that redesigning a dietary supplement label to add a domestic address or telephone number requires one color change, and no analytical tests are performed on the new label, then FDA believes that designing the label change should not take longer than 4 hours per label. This time would be used to assess the current layout of each label and choose the best location for the domestic address or telephone number. Automated printing of the labels should only require a few seconds per label.

In addition to changing their labels to meet the statutory requirement for a domestic address or a domestic telephone number, dietary supplement firms may also choose to adopt the draft guidance's recommendation that the label bear a clear, prominent statement informing consumers that the domestic address or telephone number is for reporting serious adverse events associated with use of the product. In the absence of any information about how many firms are likely to add such an explanatory statement to their dietary supplement labels, FDA is assuming conservatively that the explanatory statement will be added to all dietary supplement labels.

FDA estimates that the burden of including the recommended explanatory statement on the label will be similar to the burden of adding the full domestic address or telephone number to the dietary supplement label. We assume it will take 4 hours per label to assess the current layout of each label and choose the best location for the explanatory statement. Again we assume this label modification would require one color change and that no premarket testing of the label wording would be performed. FDA requests comments on how many dietary supplement firms and products would follow FDA's recommendation to include such an explanatory statement on the product's label. FDA also requests comments on the burden associated with placing this explanatory statement on the dietary supplement label.

The likely overestimate of the total burden caused by FDA's conservative assumption that all dietary supplement labels (SKUs) will be redesigned to add a domestic address or telephone number and to include an explanatory statement for consumers is offset to some degree by the underestimate of the number of SKUs in the marketplace resulting from FDA's lack of information on the number of SKUs for dietary supplements that are sold in a non-liquid or non-pill form. FDA requests comments on the burden estimates presented in table 1 of this document. The agency is especially interested in comments that include information about: (1) The number of dietary supplements marketed in the United States in all forms and (2) the number or percentage of dietary supplements marketed in the United States that will not require a label change to comply with the requirement that dietary supplements bear a complete domestic address or telephone number. The agency would also welcome information on whether dietary supplement firms plan to add the recommended explanatory statement to their product labels.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance, including comments regarding proposed collection of information. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number

found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that in January 2008, the FDA Web site is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at *http://www.cfsan.fda.gov/guidance.html*.

Dated: December 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–6266 Filed 12–27–07; 3:08 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Opioid Treatment Programs (OTPs) Mortality Reporting Form—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), has developed a voluntary reporting form for Opioid Treatment Programs (OTPs) to report mortality data on patients who at the time of death, were enrolled in the Programs that were certified to operate by SAMHSA.

Methadone is a Schedule II controlled substance approved by the Food and Drug Administration for the treatment of opioid dependence and pain. Although it has proven safe and effective, it must be carefully administered and for that reason, treatment of opioid dependence with methadone is provided only through specialized and Federally regulated and accredited clinics, the OTPs. Buprenorphine, a Schedule III controlled ssubstance, is also used in the treatment of opioid addiction by OTPs and office-based physicians.

In recent years, methadone has been associated with an increasing number of deaths around the country. Simultaneously, the use of methadone for pain has increased significantly over the last 5 to 10 years. While the Food and Drug Administration (FDA) maintains oversight of methadone for use in pain, SAMHSA provides oversight of methadone for use in opioid addiction treatment. Currently, there is no national database that tracks mortality among patients receiving methadone in OTPs and as a result, it is not clear whether and to what extent the increase in methadone-associated deaths may be related to treatment in OTPs. MedWatch, a voluntary reporting system maintained by FDA, provides information relevant to its role in its more general oversight of medication and device safety. A similar system is needed within SAMHSA to gather information directly relevant to the agency's mission of overseeing and ensuring safe and effective treatment for patients with opioid dependence.

In order to more accurately understand potential methadone-associated deaths at the OTP level, it is necessary to examine all patient deaths, including those related to buprenorphine. Understanding the actual cause of death of patients enrolled in OTPs can be a challenging task for many reasons, including inconsistencies in methods of reporting causes of deaths across different localities and officials; patients' use of other drugs, including illicit, over-the-counter, and prescription products; and other aspects of the patient's physical and mental condition. The standardized terminology to be used for reporting in the proposed system will contribute to a more precise and relevant analysis of individual cases and higher-level trends. The data will be used by SAMHSA to increase understanding of the factors contributing to these deaths, identify preventable causes of deaths, and ultimately, take appropriate action to minimize risk and help improve the quality of care. Importantly, better data will enable the agency to more proactively manage the oversight of treatment.

The information requested from OTPs should be readily available to any OTP that has met accreditation standards. The OTP should not find any need to otherwise analyze or synthesize new data in order to complete this form.

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR OPIOID TREATMENT PROGRAMS

Form	Number of facilities (OTPs)	Responses per facility	Burden responses (hours)	Annual burden (hours)
SAMHSA OTP Mortality Report	1,150	2	0.5	1,150

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 and e-mail her a copy at *summer.king@samhsa.hhs.gov*. Written comments should be received within 60 days of this notice.

Dated: December 31, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. 07–6254 Filed 12–31–07; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Proposed Project: 2008 National Survey of Mental Health Treatment Facilities (NSMHTF) (OMB No. 0930–0119)—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) will conduct a 2008 NSMHTF. This national survey represents a re-design of the biennial Survey of Mental Health Organizations (SMHO) last conducted in 2004 under OMB No. 0930–0119. Instead of surveying each mental health organization as a whole, the 2008 NSMHTF will survey all of the mental health treatment locations. These separate mental health service locations are called facilities, in contrast to mental health organizations, which may include multiple facilities (service locations). This survey will be (a) a 100 percent enumeration of all known mental health treatment facilities nationwide, (b) more consumer-oriented in describing services available at each facility location, and (c) patterned after SAMHSA's Office of Applied Studies National Survey of Substance Abuse Treatment Services (OMB No. 0930–0106).

The 2008 NSMHTF will utilize one questionnaire for all mental health treatment facility types including hospitals, residential treatment centers and outpatient clinics. The information collected will include intake telephone numbers for services, types of services offered and acceptable forms of payment, emergency hotline numbers, facility caseload, and facility bed counts, if applicable. All treatment facilities will be contacted by telephone prior to the mailing to verify their eligibility, and facility type.

The resulting database will be used to provide both state and national estimates of facility types and their patient caseloads. Information from the 2008 survey will also be used to update the National Mental Health Information Center's facility locator for consumers. In addition, data derived from the survey will be published by CMHS in *Data Highlights,* in *Mental Health, United States,* and in professional journals such as *Psychiatric Services* and the *American Journal of Psychiatry.* The publication *Mental Health, United States* is used by the general public, State governments, the U.S. Congress, university researchers, and other health care professionals. The following Table summarizes the estimated response burden for the survey.

ESTIMATED TOTAL RESPONSE BURDEN FOR THE 2008 NSMHTF

Facility Type	Number of respondents	Responses per respondent	Average hours per response	Total hour burden
Public Psychiatric Hospitals	502	1	1	502
Private Psychiatric Hospitals	557	1	1	557
General Hospitals	1,599	1	1	1,599
Dept. of Veterans Affairs Medical Centers	150	1	1	150
Dept. of Veterans Community-Based Outpatient Clinics	810	1	1	810
Residential Treatment Centers for SED	1,456	1	1	1,456
Outpatient Clinics	3.493	1	1	3,493
Multi-Setting Facilities	5,264	1	1	5,264
Total Facilities	13,831	.....	.....	13,831
3-Year Average	4,610	.....	.....	4,610

Written comments and recommendations concerning the proposed information collection should be sent by February 1, 2008 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: December 21, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E7–25386 Filed 12–31–07; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–0180]

Information Collection Request to Office of Management and Budget; OMB Control numbers: 1625–0001, 1625–0013, and 1625–0096

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) and Analyses to the Office of Management and Budget (OMB) requesting an extension of their approval for the following collections of information: (1) 1625–0001, Marine Casualty Information & Periodic Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; (2) 1625–0013, Plan Approval and Records for Load Lines, and (3) 1625–0096, Report of Oil or Hazardous Substance Discharge; and Report of Suspicious Maritime Activity. Before submitting these ICRs to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before March 3, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2007–0180 to the Docket Management Facility at the U.S. Department of Transportation. To avoid

duplication, please use only one of the following methods:

(1) *On-line: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* 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. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

Copies of complete ICRs are available through this docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public participation and request for comments.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2007–0180], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this notice as being available in the docket. Click on ''Search for Dockets,'' and enter the docket number (USCG–2007–0180) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in 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 Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

Information Collection Request

1. *Title:* Marine Casualty Information & Periodic Chemical Drug and Alcohol Testing of Commercial Vessel Personnel.

OMB Control Number: 1625–0001.

Summary: Marine casualty information is needed for CG investigations of commercial vessel casualties involving death, vessel damage, etc., as mandated by Congress. Chemical testing information is needed to improve CG detection/reduction of drug use by mariners. The following forms are associated with this collection: CG–2692, CG–2692A, and CG–2692B.

Need: Section 6101 of 46 U.S.C., as delegated by the Secretary of Homeland Security to the Commandant, authorizes the Coast Guard to prescribe regulations for the reporting of marine casualties involving death, serious injury, material loss of property, material damage affecting the seaworthiness of a vessel, or significant harm to the environment. It also requires information on the use of alcohol be included in a marine casualty report. Section 7503 of 46 U.S.C. authorizes the Coast Guard to deny the issuance of licenses, certificates of registry, and merchant mariner's documents (seaman's papers) to users of dangerous drugs. Similarly, 46 U.S.C. 7704 requires the Coast Guard to revoke such papers when a holder of the same has been shown to be a drug user unless the holder provides satisfactory proof that the holder is cured.

Respondents: Vessel owners and operators.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 18,876 hours to 15,753 hours a year.

2. *Title:* Plan Approval and Records for Load Lines.

OMB Control Number: 1625–0013.

Summary: This information collection is required to ensure certain vessels are not overloaded—as evidenced by the submerging of their assigned load line. In general, vessels over 150 gross tons or 24 meters (79 feet) in length engaged in commerce on international or coastwise voyages by sea, are required to obtain a Load Line Certificate. This collection also incorporates the Great Lakes load lines rule.

Need: Title 46 U.S.C. 5101 to 5116 provides the Coast Guard with the authority to enforce provisions of the International Load Line Convention, 1966. Title 46 CFR chapter I, subchapter E—Load Lines, contain the relevant regulations.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 1,681 hours to 1,699 hours a year.

3. *Title:* Report of Oil or Hazardous Substance Discharge; and Report of Suspicious Maritime Activity.

OMB Control Number: 1625–0096.

Summary: Any discharge of oil or a hazardous substance must be reported to the National Response Center (NRC) so that the pre-designated on-scene coordinator can be informed and appropriate spill mitigation action carried out. The NRC also receives

suspicious activity reports from the public and disseminates this information to appropriate entities.

Need: Titles 33 CFR 153.203, 40 CFR 263.30 and 264.56; and 49 CFR 171.15 mandates NRC to be the central place for the public to report all pollution spills. Title 33 CFR 101.305 mandates owners/operators of vessels or facilities required, have security plans report activities that may result in a Transportation Security Incident (TSI) and breaches of security to the NRC. Voluntary reports are also accepted.

Respondents: Persons-in-charge of a vessel or onshore/offshore facility; owners or operators of vessels or facilities required to have security plans; and the public.

Frequency: On occasion.

Burden: The estimated burden has increased from 9,105 hours to 13,017 hours a year.

Dated: December 21, 2007.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E7–25491 Filed 12–31–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Crystal River National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment for Crystal River National Wildlife Refuge in Citrus County, Florida.

SUMMARY: The Fish and Wildlife Service intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment for Crystal River National Wildlife Refuge. This notice is furnished in compliance with the Service's comprehensive conservation planning policy to advise other agencies and the public of our intentions, and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: To ensure consideration, comments must be received by March 3, 2008. A public scoping meeting will be held on February 6, 2008, from 6–10 p.m. The location of the meeting will be announced in the local media.

ADDRESSES: Comments, questions, and requests for information should be sent to: Joyce Kleen, Wildlife Biologist, Crystal River National Wildlife Refuge, 1502 SE Kings Bay Drive, Crystal River, Florida 34429; Telephone: 352/563–2088, Ext. 211; or electronic mail: *joyce_kleen@fws.gov*. You may find additional information concerning the refuge at the refuge's Internet site: *http://www.fws.gov/crystalriver.*

FOR FURTHER INFORMATION CONTACT: Ms. Joyce Kleen at the address in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing to the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. Public input in this planning process is essential.

Each unit of the National Wildlife Refuge System is established with specific purposes. These purposes are used to develop and prioritize management goals and objectives with the National Wildlife Refuge System mission, and to guide which public uses will occur on the refuge. The planning process is a means for the Service and the public to evaluate management goals and objectives for the best possible conservation efforts of this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the refuge's establishing purposes and the mission of the National Wildlife Refuge System.

A comprehensive conservation planning process will be conducted that will provide opportunities for Tribal, State, Federal, and local governments; non-governmental organizations; and the public to participate in issue scoping and comment. The Service invites anyone interested to respond to the following questions:

1. What problems or issues do you want to see addressed in the comprehensive conservation plan?

2. What improvements would you recommend for Crystal River National Wildlife Refuge?

The above questions have been provided for your optional use. You are not required to provide any information. The Planning Team developed these questions to gather information about individual issues and ideas concerning the refuge. The Planning Team will use comments it receives as part of the planning process; however, it will not reference individual comments or directly respond to them.

Special mailings, newspaper articles, and other media outlets will be used to announce opportunities for input throughout the planning process. A public scoping meeting will be held in Crystal River, Florida, early in February 2008.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); and other appropriate Federal laws and regulations. All comments received become part of the official public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Crystal River National Wildlife Refuge is in the town of Crystal River, Citrus County, Florida. This 80-acre refuge is comprised of several islands and springs surrounded by the spring-fed waters of Kings Bay at the headwaters of the Crystal River. Refuge management activities focus on conserving and protecting the West Indian manatee and its habitat. The refuge's warm water springs and nearby submerged vegetation provide essential winter habitat for about 20 percent of Florida's manatee population. The refuge also provides habitat and protection for other wildlife species, including wading birds, raptors, alligators, and fish. It provides wildlife-dependent recreation and environmental education for the public.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: November 14, 2007.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E7–25541 Filed 12–31–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an information collection (1028–0068).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements for ''Ferrous Metals Surveys, (13 USGS forms)''. This notice also provides the public a second opportunity to comment on the paperwork burden of this form.

DATES: Submit written comments by February 1, 2008.

ADDRESSES: You may submit comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via OMB e-mail: (*OIRA_DOCKET@omb.eop.gov*); or by fax: (202) 395–6566; and identify your submission with #1028–0068.

Please submit a copy of your comments to the Department of the Interior, USGS, via:

- E-mail: *atravnic@usgs.gov.* Use Information Collection Number 1028–0068 in the subject line.
- Fax: (703) 648–7069. Use Information Collection Number 1028–0068 in the subject line.
- Mail or hand-carry comments to the Department of the Interior; USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. Please reference Information Collection 1028–0068 in your comments.

FOR FURTHER INFORMATION CONTACT: Scott F. Sibley at (703) 648–4976. Copies of the full Information Collection Request and the forms can be obtained at no cost at *http://www.reginfor.gov* or by contacting the USGS clearance officer at the phone number listed below.

SUPPLEMENTARY INFORMATION:

Title: Ferrous Metals Surveys.

OMB Control Number: 1028–0068.

Form Number: Various (13 forms).

Abstract: Respondents to this form supply the U.S. Geological Survey with domestic consumption data of 12 metals and ferroalloys, some of which are considered strategic and critical. This information will be published as chapters in Minerals Yearbooks, monthly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry, education programs, and the general public.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked. We intend to release data collected on these forms only in a summary format that is not company-specific.

Frequency: Monthly and Annually.

Estimated Number and Description of Respondents: Approximately 1,307 consumers of ferrous and related metals. Respondents are canvasses for one frequency period (e.g., monthly respondents are not canvasses annually).

Estimated Number of Responses: 2,979.

Annual burden hours: 1,614.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: The currently approved ''hour'' burden for these forms is 1,614 hours. We estimated the public reporting burden averages 10 minutes to 1 hour per response. This includes the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, et seq.) provides that an agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of ion formation; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use automated collection techniques or other forms of information technology.

To comply with the public consultation process, on September 28, 2007, we published a **Federal Register** notice (72 FR 55242) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day public comment period. We have received no comments in response to the notice.

USGS Information Collection Clearance Officer: Alfred Travnicek, 70–3–648–7231.

Dated: December 7, 2007.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 07–6258 Filed 12–31–07; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1430–ET; AA–50224]

Public Land Order No. 7683; Extension of Public Land Order No. 6676; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order extends the withdrawal created by Public Land Order No. 6676 for an additional 20-year period. This extension is necessary to continue protection of the United States Department of Agriculture, Forest Service Cape Fanshaw Natural Area.

DATES: *Effective Date:* May 23, 2008.

FOR FURTHER INFORMATION CONTACT: Terrie D. Evarts, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7504, 907–271–5630.

SUPPLEMENTARY INFORMATION:

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and

Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land Order No. 6676 (53 FR 18282, May 23, 1988), which withdrew approximately 600 acres of National Forest System land from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (2000)), is hereby extended for an additional 20-year period.

2. Public Land Order No. 6676 will expire on May 22, 2028, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: December 10, 2007.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E7–25450 Filed 12–31–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1410–FQ; AA–8914]

Public Land Order No. 7684; Revocation of a Bureau of Land Management Order Dated July 13, 1954; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in its entirety a Bureau of Land Management Order dated July 13, 1954, as it affects 7.79 acres of public land withdrawn from surface entry and mining and reserved for use by the Federal Aviation Administration for Air Navigation Site No. 7 at Slana, Alaska. The land is no longer needed for the purpose for which it was withdrawn.

DATES: *Effective Date*: January 2, 2008.

FOR FURTHER INFORMATION CONTACT: Renee Fencl, Bureau of Land Management, Alaska State Office, 222 W. Seventh Avenue, #13, Anchorage, Alaska 99513–7599; 907–271–5067.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration has determined the land is no longer needed for air navigation facility purposes and has requested revocation of the withdrawal. Upon revocation, the State of Alaska applications for selection made under the Alaska Statehood Act and the Alaska National Interest Lands Conservation Act become effective without further action by the State, if such land is otherwise available. Otherwise, the land in this revocation will be subject to the terms and conditions of Public Land Order No. 5184, as amended, and any other withdrawal, applications, or segregation of record.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Bureau of Land Management Order designating Air Navigation Site No. 7 dated July 13, 1954, which withdrew public land from surface entry and mining and reserved it for use by the Federal Aviation Administration (formerly Civil Aeronautics Administration) for air navigation facility purposes, is hereby revoked in its entirety:

Copper River Meridian

T. 11 N., R. 8 E.,

Sec. 23, located in the Third Judicial Division, Territory of Alaska, from station 1080+00 on the centerline of the Glenn Highway as it existed January 1, 1954, which point bears N. 70°05′ E. 230 feet from the intersection of the Alaska Road Commission's Porcupine Camp Access Road centerline and the centerline of the Glenn Highway, go S. 28°00′ E. 151.51 feet to a tacked hub on the southwardly right-of-way line of the Glenn Highway, which point is the Point-of-Beginning. Thence S. 28°00′ E. 650.00 feet to a tacked hub marked Corner #2. Thence S. 62°00′ W. 495.03 feet to a tacked hub marked Corner #3. Thence N. 28° W. 720.35 feet to a tacked hub marked Corner #4. Thence N. 70°05′ E. 500.00 feet along said southwardly line of said Glenn Highway right-of-way to the Point-of-Beginning.

The area described contains approximately 7.79 acres.

2. The State of Alaska applications for selection made under Section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (2000), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (2000), becomes effective without further action by the State upon publication of this Public Land Order in the **Federal Register**, if such land is otherwise available. Lands selected by, but not conveyed to, the State will be subject to Public Land Order No. 5184, as amended, and any other withdrawal or segregation of record.

Dated: December 10, 2007.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E7–25454 Filed 12–31–07; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–936–1430–ET; HAG–07–0153; OR–59658]

Public Land Order No. 7685; Withdrawal of Public Land, Quartzville Creek; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 501.80 acres of public lands from location and entry under the United States mining laws for a period of 20 years for the Bureau of Land Management (BLM) to protect the Quartzville Creek within a Wild and Scenic River Corridor in Linn County, Oregon.

DATES: *Effective Date*: January 2, 2008.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, 503–808–6189.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management will manage the lands to protect the unique natural, scenic and recreational values along the Quartzville Creek.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described lands are hereby withdrawn from location and entry under the United States mining laws including, but not limited to, 30 U.S.C. Ch. 2 (2000), to protect the unique natural, scenic and recreational values of the Quartzville Creek within a Wild and Scenic River Corridor:

Willamette Meridian

T.11 S., R. 3 E.,

Sec. 25, W½NE¼NW¼, S½NW¼NW¼, W½NW8¼SW¼NW¼, NW¼SW¼NW¼, E½SW¼SW¼NW¼, SE¼SW¼NW¼, NE¼NW¼SW¼, E½NW¼NW¼SW¼, SW¼NW¼SW¼, N½SE¼NW¼SW¼, and W½W½SW¼SW¼;

Sec. 26, E½SE¼NE¼SE¼, E½NE¼SE¼SE¼, and SE¼SE¼SE¼;

Sec. 35, W½ of lot 3, portion of W1/2E½ of lot 3, NE¼NE¼NE¼, E½W½NE¼NE¼, W½SE¼NE¼NE¼, S½NE¼SW¼NE¼, SE¼SW¼NE¼, W1/2NE¼SE¼NE¼, NW¼SE¼NE¼, W½SW¼SE¼NE¼, SW¼NE¼SW¼,

N½SE¼NE¼SW¼, SW¼SE¼NE¼SW¼, N½NW¼SE¼, and N½S½NW¼SE¼.

T. 12 S., R. 3 E.,

Sec. 2, portion of W½ of lot 3, portion of lot 4, W½SW¼NW¼, and W½NW¼NW¼SW¼;

Sec. 3, SE¼ lot 1, N½NE¼SE¼NE¼, S½SE¼SE¼NE¼, NE¼SW¼SE¼, E½W½SW¼SE¼, and W½SE¼SW¼SE¼;

Sec. 9, E½NE¼NE¼SE¼, S½SW¼NE¼SW¼, SE¼NE¼SE¼, E½SE¼NW¼SE¼, E½NE¼SW¼SE¼, and SE¼SW¼SE¼;

Sec. 10, W½NE¼NW¼NE¼, NW¼NW¼NE¼, N½N½SW¼NW¼NE¼, S½N½NE¼NW¼, SW¼NE¼NW¼, N½N½SE¼NE¼NW¼, E½NE¼SW¼NW¼, S½SW¼SW¼NW¼, SE¼SW¼NW¼, NW¼SE¼NW¼, W½SW¼SE¼NW¼, and N½N½NW¼SW¼.

The areas described aggregate 501.80 acres in Linn County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: December 10, 2007.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E7–25455 Filed 12–31–07; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW145285]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Gary-Williams Production Company for competitive oil and gas lease WYW145285 for land in Lincoln County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW145285 effective June 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E7–25440 Filed 12–31–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW145286]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Gary-Williams Production Company for competitive oil and gas lease WYW145286 for land in Lincoln County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW145286 effective June 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E7–25441 Filed 12–31–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW145945]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Gary-Williams Production Company for Noncompetitive oil and gas lease WYW145945 for land in Lincoln County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of

this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW145945 effective August 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E7–25442 Filed 12–31–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW145946]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Gary-Williams Production Company for Noncompetitive oil and gas lease WYW145946 for land in Lincoln County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW145946 effective August 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E7–25443 Filed 12–31–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW145947]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Gary-Williams Production Company for Noncompetitive oil and gas lease WYW145947 for land in Lincoln County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW145947 effective August 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E7–25444 Filed 12–31–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW145948]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Gary-Williams Production Company for Noncompetitive oil and gas lease WYW145948 for land in Lincoln County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW145948 effective August 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E7–25445 Filed 12–31–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW145949]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Gary-Williams Production Company for Noncompetitive oil and gas lease WYW145949 for land in Lincoln County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW145949 effective August 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E7–25447 Filed 12–31–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW145950]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Gary-Williams Production Company for Noncompetitive oil and gas lease WYW145950 for land in Lincoln County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW145950 effective August 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E7–25448 Filed 12–31–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW150376]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Black Diamond Energy, Inc. for Competitive oil and gas lease WYW150376 for land in Campbell County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $20.00 per acre or fraction thereof, per year and 18⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW150376 effective June 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Julie L. Weaver,

Land Law Examiner, Branch of Fluid Minerals Adjudication.

[FR Doc. E7–25449 Filed 12–31–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–010–1430–EU; WYW–150992]

Proposed Direct Sale of Public Land, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Public Law 106–485 (Nov. 9, 2000; 114 Stat. 2199) directs the Secretary of the Interior, acting through the Bureau of Land Management, to convey all right, title and interest (excluding mineral interest) in a parcel of public land in Big Horn County and Washakie County, Wyoming. The parcel of land to be conveyed comprises some portion or portions of approximately 16,077.59 acres. Conveyance is to be made to the Westside Irrigation District, at appraised value. The sale will be processed according to regulations at 43 CFR 2711.1–2.

ADDRESSES: Address all comments concerning this Notice to Field Manager, Bureau of Land Management, Worland Field Office, P.O. Box 119, Worland, WY 82401.

FOR FURTHER INFORMATION CONTACT: Andrew Tkach, Interim Westside Project Manager, at the above address or telephone (307) 347–5100.

SUPPLEMENTARY INFORMATION: The following-described public land in Washakie and Big Horn Counties, Wyoming, are under consideration for conveyance by direct sale under Public Law 106–485 (Nov. 9, 2000; 114 Stat. 2199):

Sixth Principal Meridian, Wyoming

T. 48 N., R. 92 W.
Sec. 18, lots 2, 4;
Sec. 19, lot 1
T. 49 N., R. 92 W.
Sec. 18, lots 6–9;
Sec. 19, lots 5–13;
Sec. 30, lots 5–18;
Sec. 31, lots 5–15.
T. 48 N., R. 92½ W.
Sec. 1, lots 1–6, SW¼NE¼, W½ SE¼;
Sec. 12, lots 1–4, W½E½;
Sec. 13, lots 1–4, W½NE¼, SE¼ NE¼, SE¼;
Sec. 24, lots 1–4, E½;
Sec. 25, lots 1–4, W½ E½.
T. 48 N., R. 93 W.
Sec. 1, lots 5–16, S½;
Sec. 2, lots 5–16, S½;
Sec. 3, lots 5–16, S½;
Sec. 10, Entire Section;
Sec. 11, Entire Section:
Sec. 12, Entire Section;
Sec. 13, Entire Section;
Sec. 14, Entire Section;
Sec. 15, Entire Section;
Sec. 22, N½, SE¼;
Sec. 23, Entire Section;
Sec. 24, Entire Section;
Sec. 25, lots 1 and 2, N½ SW¼, N½ SE¼;
Sec. 26, N½SE¼;
Sec. 36, lots 1 and 2, N½NW¼.
T. 49 N., R. 93 W.
Sec. 1, SW¼ SW¼;
Sec. 2, lot 3, S½ NW¼, S½;
Sec. 11, N½N½, SE¼;
Sec. 12, W½NW¼, SE¼NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 13, Entire Section;
Sec. 14, E½;
Sec. 23, E½;
Sec. 24, Entire Section;
Sec. 25, N½;
Sec. 26, NE¼.

The area described contains 16,077.59 acres, more or less, in Washakie and Big Horn Counties, Wyoming.

The law authorizing the transfer of the land specifies that acreage may be added to or subtracted from the land to be conveyed to satisfy any mitigation requirements resulting from the NEPA analysis. The law provides that proceeds from the sale are to be used ''for acquisition of land and interests in land in the Worland District of the Bureau of Land Management that will benefit public recreation, public access, fish and wildlife habitat, or cultural resources.''

On publication in the **Federal Register** the above-described land will be segregated from appropriation under the public land laws, including the mining laws. Until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public land, except applications for the amendment of previously-filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15. The segregative effect will terminate upon issuance of a patent or publication in the **Federal Register** of a termination of the segregation, or 2 years after the date of publication in the **Federal Register** unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Public Comments: Interested parties and the general public may submit in writing any comments concerning the land being conveyed by direct sale, including notification of any encumbrances or other claims relating to the identified land, to Field Manager, BLM Worland Field Office, at the above address. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made public at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: Public Law 106–485 (Nov. 9, 2000; 114 Stat. 2199))

Dated: December 19, 2007.

Bill Hill,

Field Manger.

[FR Doc. E7–25539 Filed 12–31–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Outer Continental Shelf (OCS) Chukchi Sea Alaska, Oil and Gas Lease Sale 193

AGENCY: Minerals Management Service, Interior.

ACTION: Final Notice of Sale (FNOS), OCS Oil and Gas Lease Sale 193, Chukchi Sea.

SUMMARY: The MMS will hold OCS Oil and Gas Lease Sale 193 on February 6, 2008, in accordance with provisions of the OCS Lands Act (43 U.S.C. 1331–1356, as amended), the implementing regulations (30 CFR 256), and the OCS Oil and Gas Leasing Program 2007–2012.

DATES: Lease Sale 193 is scheduled to be held on February 6, 2008, at the Wilda Marston Theatre, Z. J. Loussac Public Library, 3600 Denali Street, Anchorage, Alaska. Public reading will begin at 9 a.m. All times referenced in this document are local Anchorage, Alaska, times, unless otherwise specified.

ADDRESSES: A package containing the FNOS and several supporting and essential documents referenced herein is available from: Alaska OCS Region, Minerals Management Service, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5823, Telephone: (907) 334–5200 or 1–800–764–2627.

These documents are also available on the MMS Alaska OCS Region's Web page at *http://www.mms.gov/alaska.*

Bid Submission Deadline: Bidders will be required to submit sealed bids to MMS at the Alaska OCS Region Office, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503, by 10 a.m. on the day before the sale, Tuesday, February 5, 2008. If bids are mailed, the envelope containing all of the sealed bids must be marked as follows:

Attention: Mr. Fred King, Contains Sealed Bids for Sale 193.

If bids are received later than the time and date specified above, they will be returned unopened to the bidders. Bidders may not modify or withdraw their bids unless the Regional Director, Alaska OCS Region, receives a written modification or written withdrawal request prior to 10 a.m., Tuesday, February 5, 2008. Should an unexpected

event such as an earthquake or travel restrictions be significantly disruptive to bid submission, the Alaska OCS Region may extend the Bid Submission Deadline. Bidders may call (907) 334–5200 for information about the possible extension of the Bid Submission Deadline due to such an event.

Area Offered for Lease: The MMS is offering for lease all whole and partial blocks listed in the document ''Blocks Available for Leasing in OCS Oil and Gas Lease Sale 193'' included in the FNOS 193 package. All of these blocks are shown on OCS Official Protraction Diagrams, and in some cases on Supplemental Official OCS Block Diagrams. The following OCS Official Protraction Diagrams pertain to the Sale 193 area and are available at *http://www.mms.gov/ld/alaska.htm.*

- NS 02–08, Unnamed, revised December 31, 1994
- NS 03–07, Unnamed, revised December 31, 1994
- NS 03–08, Unnamed, revised December 31, 1994
- NS 04–07, Unnamed, revised December 31, 1994
- NS 04–08, Unnamed, revised December 31, 1994
- NR 02–02, Tison, revised December 31, 1994
- NR 03–01, Karo, revised December 31, 1994
- NR 03–02, Posey, revised December 31, 1994
- NR 04–01, Hanna Shoal, revised September 30, 1997
- NR 04–02, Barrow, revised September 30, 1997
- NR 02–04, Studds, revised December 31, 1994
- NR 03–03, Colbert, revised December 31, 1994
- NR 03–04, Solivik Island, revised September 30, 1997
- NR 04–03, Wainwright, revised September 30, 1997
- NR 02–06, Chukchi Sea, revised December 31, 1994
- NR 03–05, Point Lay West, revised September 30, 1997

A listing of blocks included in the sale is available at the MMS office listed above. The locator map (available at *http://www.mms.gov/alaska*) may assist you in locating a particular block, but it should not be used for the official description of blocks available for lease. The OCS Official Protraction Diagrams constitute the official descriptions of the areas offered.

Note that block numbers may repeat between OCS Official Protraction Diagrams (OPD's). To uniquely describe a lease tract, you must reference both the OPD number and name and the block number.

Statutes and Regulations: Each lease issued in the lease sale is subject to the OCS Lands Act of August 7, 1953, 67 Stat. 462; 43 U.S.C. 1331, *et seq.*, as amended (92 Stat. 629), hereinafter called ''the Act''; all regulations issued pursuant to the Act and in existence upon the effective date of the lease; all regulations issued pursuant to the statute in the future which provide for the prevention of waste and conservation of the natural resources of the OCS and the protection of correlative rights therein; and all other applicable statutes and regulations.

Lease Terms and Conditions: The following lease terms and condition apply:

Initial Period: 10 years.

Minimum Bonus Bid Amounts: $25.00 per hectare, or a fraction thereof, for all blocks. Refer to the Final Notice of Sale, Chukchi Sea Sale 193 map, and the *Summary Table of Minimum Bids, Minimum Royalty Rates, and Rental Rates* shown below.

Rental Rates: The Lessee shall pay the Lessor, on or before the first day of each lease year which commences prior to a discovery in paying quantities of oil or gas on the leased area, a rental at the rate shown below in the *Summary Table of Minimum Bids, Minimum Royalty Rates, and Rental Rates.* During the time period in which a lease is classified as producible, i.e., following a discovery in paying quantities, but before royalty-bearing production begins, a rental of $13 per hectare or fraction thereof, applies and is paid at the end of each lease year until the start of royalty-bearing production.

Minimum Royalty Rates: After the start of royalty-bearing production and notwithstanding any royalty suspension which may apply, the Lessee shall pay the Lessor a minimum royalty of $13 per hectare, or fraction thereof, to be paid at the expiration of each lease year with credit applied for actual royalty paid during the lease year. If actual royalty paid exceeds the minimum royalty requirement, then no minimum royalty payment is due.

Royalty Rates: A 12½ percent royalty rate will apply for all blocks.

SUMMARY TABLE OF MINIMUM BIDS, MINIMUM ROYALTY RATES, AND RENTAL RATES

Terms (values per hectare or fraction thereof)	
Royalty Rate	12½% fixed
Minimum Bonus Bid	$25.00
Minimum Royalty Rate	13.00
Rental Rates:	
Year 1	2.50
Year 2	3.75
Year 3	5.00
Year 4	6.25
Year 5	7.50
Year 6	10.00
Year 7	12.00
Year 8	15.00
Year 9	17.00
Year 10	20.00

Royalty Suspension: Royalty suspension, prorated by lease acreage and subject to price thresholds, will apply to all blocks. In accordance with applicable regulations at 30 CFR 260, the following royalty suspension provisions will apply to leases issued as a result of Chukchi Sea Oil and Gas Lease Sale 193. In addition to these Royalty Suspension Provisions, please refer to 30 CFR 218.151 and applicable parts of 260.120–260.124 for regulations on royalty suspensions and rental obligations that will apply to your lease.

1. A lease in the Chukchi Sea, depending on surface area, will receive a royalty suspension volume (RSV) as follows:

Lease size (hectares)	RSV (million barrels of oil equivalent)
Less than 771	10
771 to less than 1,541	20
1,541 or more	30

2. Natural gas must be measured in accordance with 30 CFR 203.73.

3. Each lessee must pay royalty on production that might otherwise receive royalty relief (in 30 CFR 260) for any calendar year during which the actual New York Mercantile Exchange (NYMEX) annual price for the light sweet crude oil or natural gas exceeds the threshold price ($39 per barrel of oil or $6.50 per million British thermal units (Btu) of gas, adjusted for inflation) in that year. Such production will be deducted from the remaining RSV. The actual NYMEX annual price for the commodity is defined as the arithmetic average of the daily closing prices for the ''nearby delivery month'' on the NYMEX in a calendar year. The actual NYMEX annual price for the commodity is calculated by averaging the commodity daily closing prices for each month in the year, and then averaging the 12 monthly averages.

(a) The threshold price in any year, say year *t*, is determined by inflating the base year 2004 price of $39 per barrel of oil or $6.50 per million Btu of gas. This base year price is modified by the

percentage change in the implicit price deflator as reported by the U.S. Department of Commerce, Bureau of Economic Analysis, for the interval between 2004 and year *t*, resulting in the adjusted threshold price for year *t*. For example, if the deflator indicates that inflation is 1.6 percent in 2005, 2.1 percent in 2006, 2.5 percent in 2007, and 2.5 percent for 2008, then the threshold price in calendar year 2008 would become $42.50 per barrel of oil and $7.08 per million Btu of gas. Therefore, royalty on oil production in calendar year 2008 would be due if the 2008 actual NYMEX oil price, as calculated above, exceeds $42.50 per barrel. The royalty on gas production in calendar year 2008 would be due if the 2008 actual NYMEX gas price, as calculated above, exceeds $7.08 per million Btu.

(b) Royalties on production, when the actual NYMEX annual price of the commodity exceeds the threshold price in any calendar year, must be paid no later than 90 days after the end of that calendar year. (See 30 CFR 260.122(b)). Also, when the actual NYMEX annual price of the commodity exceeds the threshold price in any calendar year, royalties on production must be provisionally paid in the following calendar year. (See 30 CFR 260.122(c)).

4. In the case of a Sale 193 lease that is part of an approved unit agreement, allocated production from the unit can only apply against the lease's RSV if that lease is included in an approved participating area. The RSV will be applied to each lease consistent with the production allocation schedule approved by the MMS for the participating area. Participating area means all or parts of unit tracts described and designated as a Participating Area under the unit agreement for the purposes of allocating one or more unitized substances produced from a reservoir.

5. A lessee must resume paying full royalties on the first day of the month following the month in which the RSV is exhausted. Lessees do not owe royalties for the remainder of the month in which the RSV is exhausted, unless the actual NYMEX annual price of the commodity exceeds the threshold price for that year.

6. The MMS will provide notice when the actual NYMEX annual price of the commodity is above the threshold price. Information on actual and threshold prices can be found at the MMS Web site (*www.mms.gov/econ*).

Stipulations and Information to Lessees: The documents entitled ''Final Lease Stipulations'' and ''Final Information to Lessees'' for Oil and Gas Lease Sale 193 contain the text of the Final Stipulations and the Information to Lessees clauses. These documents are included in the FNOS 193 package.

As required by the MMS, each company that has been awarded a lease must execute all copies of the lease (Form MMS–2005 (March 1986) as amended), pay by electronic funds transfer (EFT) the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, subpart I, as amended.

Debarment and Suspension (Nonprocurement): In accordance with regulations pursuant to 2 CFR, part 180, and 2 CFR, part 1400, the lessee shall comply with the U.S. Department of the Interior's nonprocurement debarment and suspension requirements and agree to communicate this requirement to comply with these regulations to persons with whom the lessee does business as it relates to this lease by including this term as a condition to enter into their contracts and other transactions. Execution of the lease, which includes an Addendum specific to debarment, by each lessee constitutes notification to the MMS that each lessee is not excluded, disqualified, or convicted of a crime as described in 2 CFR 180.335, unless the lessee has provided a statement disclosing information as described in 2 CFR 180.335, and the MMS receives an exception from the U.S. Department of the Interior as described in 2 CFR 180.135 and 180.400.

Method of Bidding: For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled ''Sealed Bid for Oil and Gas Lease Sale 193, not to be opened until 9 a.m., Wednesday, February 6, 2008.'' The total amount of the bid must be in whole dollars; any cent amount above the whole dollar will be ignored by MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document ''Bid Form and Envelope'' contained in the FNOS 193 package.

Restricted Joint Bidders: The MMS published a list of restricted joint bidders, which applies to this sale, in the **Federal Register** at 72 FR 64088 on November 14, 2007. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, i.e. 33.33333 percent. The MMS may require bidders to submit additional documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders must execute all documents in conformance with signatory authorizations on file in the Alaska OCS Region. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders are advised that MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including paying the one-fifth bonus bid amount on all high bids. A statement to this effect must be included on each bid (see the document ''Bid Form and Envelope'' contained in the FNOS 193 package).

Bonus Bid Deposit: Each bidder submitting an apparent high bid must submit a bonus bid deposit to the MMS equal to one-fifth of the bonus bid amount for each such bid. Under the authority granted by 30 CFR 256.46(b), MMS will require bidders to use EFT procedures for payment of the one-fifth bonus bid deposits for Sale 193. Payment of the deposit will be due by 1:00 p.m. Eastern Time the day following bid reading. Detailed bid deposit procedures for Sale 193 will be found within the ''Instructions for Making EFT Bonus Payments'' document on the MMS Web site.

Note: Certain bid submitters [i.e., those that are not currently an OCS mineral lease record title holder or designated operator or those that have ever defaulted on a one-fifth bonus payment (EFT or otherwise)] are required to guarantee (secure) their one-fifth bonus payment prior to the submission of bids. For those who must secure the EFT one-fifth bonus payment, one of the following options may be used: (1) Provide a third-party guarantee; (2) Amend bond coverage; (3) Provide a letter of credit; or (4) Provide a lump sum payment in advance via EFT. The EFT instructions specify the requirements for each option.

Payment of the deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States. If a lease is awarded, MMS requests that only one transaction be used for payment of the four-fifths bonus bid amount and the first year's rental.

Withdrawal of Blocks: The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids: The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents

contained in the associated FNOS package for Sale 193 and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. The Attorney General of the United States may also review the results of the lease sale prior to the acceptance of bids and issuance of leases. Any bid submitted that does not conform to the requirements of this Notice; the OCS Lands Act, as amended; or applicable regulations may be returned to the person submitting that bid by the Regional Director and not considered for acceptance. To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, high bids will be evaluated in accordance with MMS bid adequacy procedures.

Successful Bidders: As required by MMS, each company that has been awarded a lease must execute all 3 copies of the lease (Form MMS–2005 (March 1986) as amended), pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I.

Affirmative Action: MMS requests that, prior to bidding, Equal Opportunity Affirmative Action Representation Form MMS 2032 (June 1985) and Equal Opportunity Compliance Report Certification Form MMS 2033 (June 1985) be on file in the Alaska OCS Region. This certification is required by 41 CFR 60 and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order Nos. 11375 (October 13, 1967), 12086 (October 5, 1978), and 13279 (December 12, 2002). In any event, prior to the execution of any lease contract, both forms are required to be on file in the Alaska OCS Region.

Notice of Bidding Systems: Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the OCS Lands Act requires that, at least 30 days before any lease sale, a Notice be submitted to Congress and published in the **Federal Register**. This Notice of Bidding Systems is for OCS Lease Sale 193, Chukchi Sea, scheduled to be held on February 6, 2008. In Sale 193, all blocks are being offered under a bidding system that uses a cash bonus and a fixed royalty of 12½ percent with a royalty suspension of up to 30 million barrels of oil equivalent per lease. The amount of royalty suspension available on each lease is dependent on the area of the lease and specified in the Sale Notice. This bidding system is authorized under 30 CFR 260.110(g), which allows use of a cash bonus bid with a royalty rate of not less than 12 ½ percent and with suspension of royalties for a period, volume, or value of production, and an annual rental. Analysis performed by MMS indicates that use of this system provides an incentive for development of this area while ensuring that a fair sharing of revenues will result if major discoveries are made and produced.

Geophysical Data and Information Statement: Pursuant to 30 CFR 251.12, MMS has a right to access geophysical data and information, as well as reprocessed versions of the data, collected under a permit in the OCS. Every bidder submitting a bid on a block in Sale 193, or participating as a joint bidder in such a bid, must submit a Geophysical Data and Information Statement (GDIS) identifying any processed or reprocessed pre- and post-stack geophysical data and information used as part of the decision to bid or participate in a bid on the block. The GDIS should clearly identify the survey type (2–D or 3–D), survey extent (i.e., number of line miles for 2D or number of blocks for 3D), and imaging type (pre-stack, post-stack and migration (time and/or depth) algorithm) of the data and information. The statement must also include the name and phone number of a contact person and an alternate, who are both knowledgeable about the data listed, the owner or controller of the reprocessed data or information, the survey from which the data were reprocessed and the owner/controller of the original data set, the date of reprocessing and whether the data were processed in-house or by a contractor. In the event such data and information include multiple data sets processed from the same survey using different velocity models or different processing parameters, you should identify only the highest quality data set used for bid preparation. The MMS reserves the right to query about alternate data sets and to quality check and compare the listed and alternative data sets to determine which data set most closely meets the needs of the fair-market-value determination process.

The statement must also identify each block upon which a bidder participated in a bid but for which it does not possess or control such data and information.

In the event your company supplies any type of data to the MMS, in order to get reimbursed, your company must be registered with the Central Contractor Registration (CCR) at *http://www.ccr.gov.* This is a requirement that was implemented on October 1, 2003, and requires all entities doing business with the Government to complete a business profile in the CCR and update it annually. Payments are made electronically based on the information contained in the CCR. Therefore, if your company is not actively registered in the CCR, MMS will not be able to reimburse or pay your company for any data supplied.

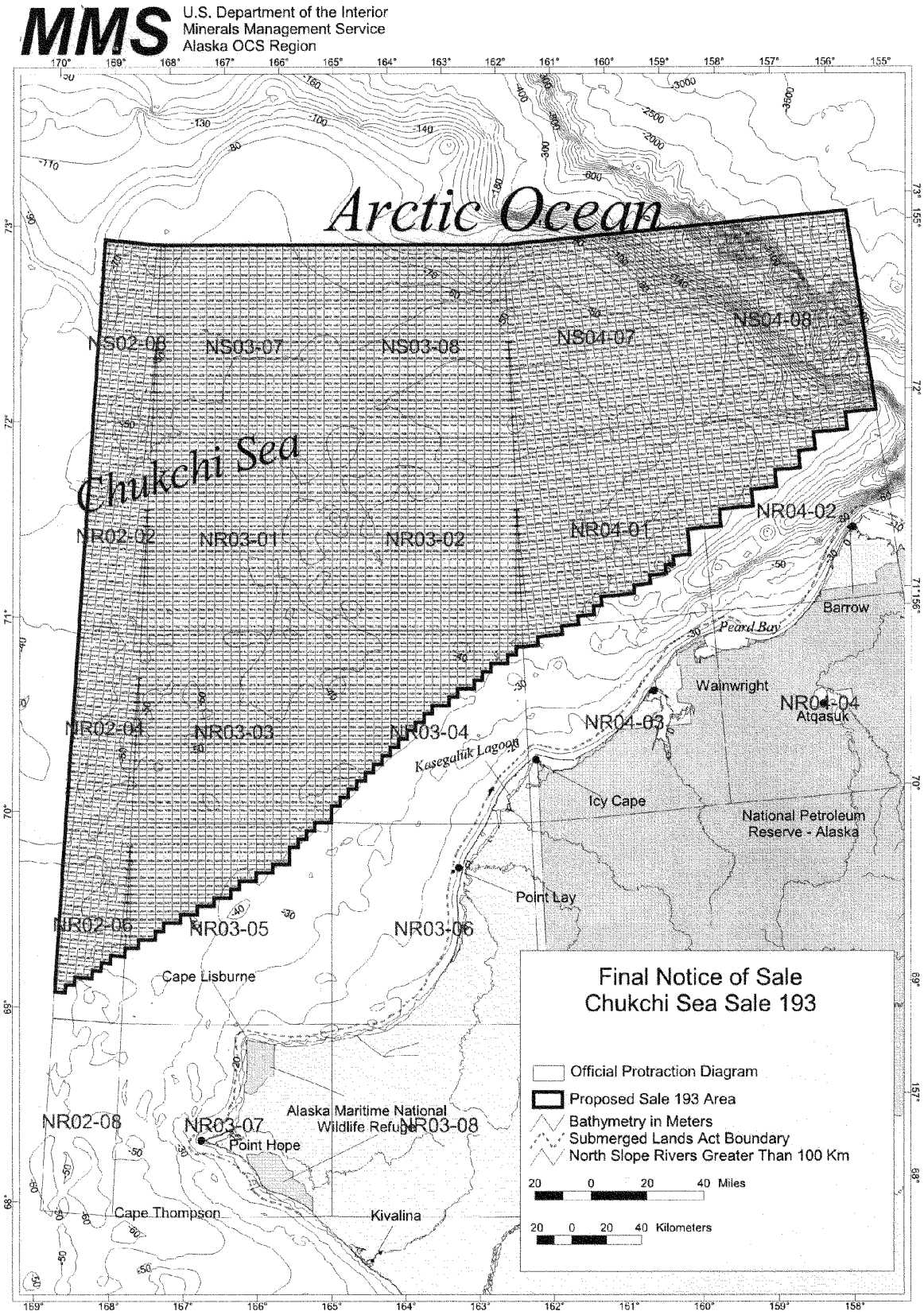
Protecting and disclosing data and information listed on the GDIS to the public is governed by 30 CFR 251.14. Except as specified in that section or in 30 CFR 250 and 252, if the Regional Director determines any data or information are exempt from public disclosure under 30 CFR 251.14(a), MMS will not provide the data and information to any State or to the executive of any local government or to the public unless the bidder and all third parties agree to the disclosure. For this reason, the bidder is instructed to submit the GDIS in a separate, sealed envelope at the time of bid submission. An example of the GDIS and a sample of the Geophysical Information envelope are available at the MMS Alaska OCS Region's Web page at *http://www.mms.gov/alaska.*

Dated: December 20, 2007.

Randall B. Luthi,

Director, Minerals Management Service.

BILLING CODE 4310–MR–P



[FR Doc. 07–6226 Filed 12–31–07; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–07–030]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 8, 2008 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–413 and 731–TA–913–916 and 918 (Review) (Stainless Steel Bar from France, Germany, Italy, Korea, and the United Kingdom)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before January 23, 2008.)
5. Outstanding action jackets: (1.) Document No. GC–07–225 (Administrative matter).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: December 27, 2007.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E7–25461 Filed 12–31–07; 8:45 am]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 73—''Physical Protection of Plants and Materials.''
2. *Current OMB approval number:* 3150–0002.
3. *How often the collection is required:* On occasion. Revised Security Plans are submitted as required and reports are submitted and evaluated as events occur.
4. *Who is required or asked to report:* Nuclear power reactor licensees, licensed under 10 CFR Part 50 or 52.
5. *The number of annual respondents:* 384.
6. *The number of annual responses:* 78,094.
7. *The number of hours needed annually to complete the requirement or request:* 524,820 hours (50,212 reporting [0.64 hours per response] and 474,608 recordkeeping [approximately 1,236 hours per record keeper]).
8. *Abstract:* NRC regulations in 10 CFR part 73 prescribe requirements to establish and maintain a physical protection system and security organization. The objective is to ensure that activities involving special nuclear material are consistent with interests of common defense and security and that these activities do not constitute an unreasonable risk to public health and safety. The information in the reports and records submitted by licensees is used by the NRC staff to ensure that the health and safety of the public and the environment are protected.

Submit, by March 3, 2008, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Margaret A. Janney (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7245, or by e-mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 26th day of December 2007.

For the Nuclear Regulatory Commission.

Gregory Trussell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–25438 Filed 12–31–07; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Notice To Add a New System of Records

SUMMARY: As required under the Privacy Act of 1974, (5 U.S.C. 552a), as amended, the Peace Corps is giving notice of a new system of records titled Shriver E.

DATES: This action will be effective without further notice on February 19, 2008, unless comments are received by February 1, 2008, that would result in a contrary determination.

ADDRESSES: You may submit comments by e-mail to *sglasow@peacecorps.gov.* Include Privacy Act System of Records in the subject line of the message. You may also submit comments by mail to Suzanne Glasow, Office of the General Counsel, Peace Corps, Suite 8200, 1111 20th Street, NW., Washington, DC 20526. Contact Suzanne Glasow for copies of comments.

FOR FURTHER INFORMATION CONTACT: Suzanne Glasow, Associate General Counsel, 202–692–2150, *sglasow@peacecorps.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act, 5 U.S.C. 552a, provides that the public will be given a 30-day period in which to comment on the new system. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the proposed system. In accordance with 5 U.S.C. 552a, Peace Corps has provided a report on this system to OMB and the Congress.

SYSTEM NAME:

PC–30, Shriver E.

SYSTEM LOCATION:

Chief Information Officer, Peace Corps, 1111 20th St., NW., Washington, DC 20526.

Categories of individuals covered by the system:

Prospective applicants, school administrators, and the general public.

CATEGORIES OF RECORDS IN THE SYSTEM:

First name, last name, email address, the zip code, city and state.

Authority for maintenance of the system (includes any revisions or amendments):

Peace Corps Act, 22 U.S.C. 2501 *et seq.*

PURPOSE:

This system allows Peace Corps staff to host online meetings over the Internet. Known as web-conferences, these meetings allow Peace Corps staff to converse, give presentations, show videos, chat with participants in the meeting.

Name and e-mail addresses are collected so that the Web-conference instructions and logon information can be emailed to the participants. First names and last names are used to identify users when they log into the Web-conferencing meeting. City, State and Zip code are used to track geographic locations of attendees for the purpose of analyzing attendance trends.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

Peace Corps general routine uses A, H, I, K, L and M.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: In a computerized database.

RETRIEVABILITY:

By first name, last name, email address, the zip code, city and state.

SAFEGUARDS:

Computer records are maintained in a secure, password-protected computer system. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

The information is deleted from the system every six months. Ninety-days after deletion, the information is physically deleted from the servers. Data is deleted from all backup tapes once they are overwritten via incremental backup, six months after the time it is collected.

SYSTEM MANAGERS:

Chief Information Officer, Peace Corps Headquarters in Washington, DC 20526.

PROCEDURES FOR NOTIFICATION, ACCESS, AND CONTESTING:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Record subject.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: December 27, 2007.

Garry Stanberry,

Deputy Associate Director, Management.

[FR Doc. E7–25511 Filed 12–31–07; 8:45 am]

BILLING CODE 6051–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection: Statement Regarding Contributions and Support of Children: OMB 3220–0195.

Section 2(d)(4) of the Railroad Retirement Act (RRA), provides, in part, that a child is deemed dependent if the conditions set forth in section 202(d)(3),(4) and (9) of the Social Security Act are met. Section 202(d)(4) of the Social Security Act, as amended by Public Law 104–121, requires as a condition of dependency that a child receives one-half of his or her support from the stepparent. This dependency impacts upon the entitlement of a spouse or survivor of an employee whose entitlement is based upon having a stepchild of the employee in care, or on an individual seeking a child's annuity as a stepchild of an employee. Therefore, depending on the employee for at least one-half support is a condition affecting eligibility for increasing an employee or spouse annuity under the social security overall minimum provisions on the basis of the presence of a dependent child, the employee's natural child in limited situations, adopted children, stepchildren, grandchildren and step-grandchildren and equitably adopted children. The regulations outlining child support and dependency requirements are prescribed in 20 CFR 222.50–57.

In order to correctly determine if an applicant is entitled to a child's annuity based on actual dependency, the RRB uses Form G–139, Statement Regarding Contributions and Support of Children, to obtain financial information needed to make a comparison between the amount of support received from the railroad employee and the amount received from other sources. Completion is required to obtain a benefit. One response is required of each respondent.

The RRB estimates that 500 Form G–139s are completed annually. The completion time is estimated at 60 minutes. The RRB proposes no changes to Form G–139.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or *Charles.Mierzwa@rrb.gov.* Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@rrb.gov.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E7–25429 Filed 12–31–07; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Correction to Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In the document appearing on page 70905, FR Doc. E7–24153, Agency Forms Submitted for OMB Review, Request for Comments dated December 13, 2007, the Railroad Retirement Board is making a correction to a sentence referencing Form RL–380–F, Report of Medicaid State Office on Beneficiary's In Status, in the **SUMMARY** section. As published, the document contains an error that is misleading to the public.

Correction of Publication: In the **SUMMARY** section, the sentence which reads ''Completion of Form RL–380–F is voluntary'', is corrected to read ''Completion of Form RL–380–F is mandatory''.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E7–25432 Filed 12–31–07; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 206(4)–3; SEC File No. 270–218; OMB Control No. 3235–0242.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 206(4)–3 (17 CFR 275.206(4)–3), which is entitled ''Cash Payments for Client Solicitations,'' provides restrictions on cash payments for client solicitations. The rule requires that an adviser pay all solicitors' fees pursuant to a written agreement. When an adviser will provide only impersonal advisory services to the prospective client, the rule imposes no disclosure requirements. When the solicitor is affiliated with the adviser and the adviser will provide individualized services, the solicitor must, at the time of the solicitation, indicate to prospective clients that he is affiliated with the adviser. When the solicitor is not affiliated with the adviser and the adviser will provide individualized services, the solicitor must, at the time of the solicitation, provide the prospective client with a copy of the adviser's brochure and a disclosure document containing information specified in rule 206(4)–3. The information rule 206(4)–3 requires is necessary to inform advisory clients about the nature of the solicitor's financial interest in the recommendation so they may consider the solicitor's potential bias, and to protect investors against solicitation activities being carried out in a manner inconsistent with the adviser's fiduciary duty to clients. Rule 206(4)–3 is applicable to all Commission registered investment advisers. The Commission believes that approximately 2,163 of these advisers have cash referral fee arrangements. The rule requires approximately 7.04 burden hours per year per adviser and results in a total of approximately 15,228 total burden hours ($7.04 \times 2{,}163$) for all advisers.

The disclosure requirements of rule 206(4)–3 do not require recordkeeping or record retention. The collections of information requirements under the rules are mandatory. Information subject to the disclosure requirements of rule 206(4)–3 is not submitted to the Commission. Accordingly, the disclosures pursuant to the rule are not kept confidential. 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.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 20, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–25434 Filed 12–31–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57041; File No. SR–NYSE–2007–99]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval to Proposed Rule Change to Permit Issuers of Index-Linked Securities to Submit a Letter From the Issuer's Authorized Executive Officer Rather Than Provide a Certified Copy of the Resolution Adopted By the Issuers' Board of Directors, When the Issuers Are Voluntarily Delisting the Securities From the Exchange and Transferring the Listing to Another National Securities Exchange

December 26, 2007.

I. Introduction

On October 31, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend section 806.02 of the NYSE Listed Company Manual. The proposed rule change was published in the **Federal Register** on November 26, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend section 806.02 of the Exchange's Listed Company Manual to amend the voluntary delisting procedures by an issuer of an index-linked security. Currently, any issuer that seeks to voluntarily delist a security from the Exchange must provide the Exchange with a certified copy of the resolution adopted by the issuer's board of directors authorizing such delisting and comply with all of the requirements of Rule 12d2–2(c) under the Act.[4]

Under the Exchange's proposal, issuers of index-linked securities would no longer be required to provide a certified copy of the resolution adopted by the issuers' board of directors, when these issuers are voluntarily delisting the securities from the Exchange and transferring the listing of the securities to another national securities exchange. Rather, an issuer who voluntarily delists

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56812 (November 19, 2007), 72 FR 66012.

[4] 17 CFR 240.12d2–2(c).

an index-linked security, listed on the Exchange pursuant to sections 703.19 or 703.22 of the Listed Company Manual, in connection with the transfer of the listing of the security to another national securities exchange, would need to provide to the Exchange a letter signed by an authorized executive officer of the issuer setting forth the reasons for the delisting. The issuer of an index-linked security is required to comply with all other aspects of section 806.02 of the Listed Company Manual and Rule 12d2–2(c) under the Act, which requires, among other things, that issuers comply with all applicable laws in effect in the state in which they are incorporated.

In addition, the Exchange is deleting obsolete rule text from section 806.02 of the Listed Company Manual.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations applicable to a national securities exchange, and in particular, with the requirements of section 6(b) of the Act.[5] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act[6] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that requiring a letter from an authorized executive officer instead of a certified copy of the resolutions adopted by the issuer's board of directors is consistent with the requirements of Rule 12d2–2 under the Act[7] and notes that the proposal is similar to the voluntary withdrawal procedures for dually-listed issuers on NYSE Arca, Inc.[8] Replacing the board certification requirement with a letter from an authorized executive officer may ease the burden on issuers of index-linked securities who wish to transfer the listing to another national securities exchange. The Commission notes that the security would continue to be listed and traded on a national securities exchange.[9] Further, the Commission notes that requiring a letter from an authorized executive officer would ensure the issuer properly made the delisting decision and complied with applicable laws in effect in its jurisdiction, consistent with investor protection and the public interest. The Exchange further represented that the issuers informed the Exchange that under the laws of their place of incorporation, no board of directors resolutions are required.

The Commission notes that since the securities would list and trade on another national securities exchange, transparent last sale information will continue to be disseminated on the securities on an uninterrupted basis. It would also ensure the other protections for trading a security on a national securities exchange remain, such as the periodic reporting obligations under the Act.

Finally, the Commission finds deletion of the obsolete language is consistent with the requirements of the Act. The language to be deleted is no longer in effect since the Commission approved NYSE rules to comply with the July 2005 amendments to Rule 12d2–2 under the Act.

Based on the above reasons, the Commission finds that the proposal is consistent with the requirements of the Act.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–2007–99) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E7–25446 Filed 12–31–07; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b). In approving the proposed rule change, as amended, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 240.12d2–2.

[8] *See* NYSE Arca Equities Rule 5.4(b).

[9] In its filing, the Exchange represented that it does not plan to list any more index-linked securities and the issuers of all listed index-linked securities have agreed to the Exchange's request to transfer the listing to NYSE Arca, Inc.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for the United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final action regarding amendments to Policy Statement § 1B1.10, effective March 3, 2008.

SUMMARY: The Sentencing Commission hereby gives notice of amendments to a policy statement and commentary made pursuant to its authority under 28 U.S.C. 994(a) and (u). The Commission promulgated an amendment to Policy Statement § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range) clarifying when, and to what extent, a sentencing reduction is considered consistent with the policy statement and therefore authorized under 18 U.S.C. 3582(c)(2).

The Commission also has reviewed amendments submitted to Congress on May 1, 2007, that may result in a lower guideline range and has designated Amendment 706, as amended by Amendment 711, for inclusion in Policy Statement § 1B1.10 as an amendment that may be applied retroactively.

DATES: The effective date of these policy statement and commentary amendments is March 3, 2008.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Officer, Telephone: (202) 502–4597.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o), and specifies in what circumstances and by what amount sentences of imprisonment may be reduced if the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses pursuant to 28 U.S.C. 994(u).

Additional information may be accessed through the Commission's Web site at *http://www.ussc.gov.*

Authority: 28 U.S.C. 994(a), (u).

Ricardo H. Hinojosa,

Chair.

1. Amendment: Chapter One, Part B, Subpart One, is amended by striking § 1B1.10 and its accompanying commentary and inserting the following:

• "§ 1B1.10. Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)

(a) Authority.—

(1) In General.—In a case in which a defendant is serving a term of

imprisonment, and the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual listed in subsection (c) below, the court may reduce the defendant's term of imprisonment as provided by 18 U.S.C. 3582(c)(2). As required by 18 U.S.C. 3582(c)(2), any such reduction in the defendant's term of imprisonment shall be consistent with this policy statement.

(2) Exclusions.—A reduction in the defendant's term of imprisonment is not consistent with this policy statement and therefore is not authorized under 18 U.S.C. 3582(c)(2) if—

(A) None of the amendments listed in subsection (c) is applicable to the defendant; or

(B) An amendment listed in subsection (c) does not have the effect of lowering the defendant's applicable guideline range.

(3) Limitation.—Consistent with subsection (b), proceedings under 18 U.S.C. 3582(c)(2) and this policy statement do not constitute a full resentencing of the defendant.

(b) Determination of Reduction in Term of Imprisonment.—

(1) In General.—In determining whether, and to what extent, a reduction in the defendant's term of imprisonment under 18 U.S.C. 3582(c)(2) and this policy statement is warranted, the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (c) had been in effect at the time the defendant was sentenced. In making such determination, the court shall substitute only the amendments listed in subsection (c) for the corresponding guideline provisions that were applied when the defendant was sentenced and shall leave all other guideline application decisions unaffected.

(2) Limitations and Prohibition on Extent of Reduction.—

(A) In General.—Except as provided in subdivision (B), the court shall not reduce the defendant's term of imprisonment under 18 U.S.C. 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended guideline range determined under subdivision (1) of this subsection.

(B) Exception.—If the original term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing, a reduction comparably less than the amended guideline range determined under subdivision (1) of this subsection may be appropriate. However, if the original term of imprisonment constituted a non-guideline sentence determined pursuant to 18 U.S.C. 3553(a) and *United States* v. *Booker,* 543 U.S. 220 (2005), a further reduction generally would not be appropriate.

(C) Prohibition.—In no event may the reduced term of imprisonment be less than the term of imprisonment the defendant has already served.

(c) Amendments covered by this policy statement are listed in Appendix C as follows: 126, 130, 156, 176, 269, 329, 341, 371, 379, 380, 433, 454, 461, 484, 488, 490, 499, 505, 506, 516, 591, 599, 606, 657, and 702.

Commentary

Application Notes:

1. Application of Subsection (a).—

(A) Eligibility.—Eligibility for consideration under 18 U.S.C. 3582(c)(2) is triggered only by an amendment listed in subsection (c) that lowers the applicable guideline range. Accordingly, a reduction in the defendant's term of imprisonment is not authorized under 18 U.S.C. 3582(c)(2) and is not consistent with this policy statement if: (i) None of the amendments listed in subsection (c) is applicable to the defendant; or (ii) an amendment listed in subsection (c) is applicable to the defendant but the amendment does not have the effect of lowering the defendant's applicable guideline range because of the operation of another guideline or statutory provision (e.g., a statutory mandatory minimum term of imprisonment).

(B) Factors for Consideration.—

(i) In General.—Consistent with 18 U.S.C. 3582(c)(2), the court shall consider the factors set forth in 18 U.S.C. 3553(a) in determining: (I) whether a reduction in the defendant's term of imprisonment is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

(ii) Public Safety Consideration.—The court shall consider the nature and seriousness of the danger to any person or the community that may be posed by a reduction in the defendant's term of imprisonment in determining: (I) Whether such a reduction is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

(iii) Post-Sentencing Conduct.—The court may consider post-sentencing conduct of the defendant that occurred after imposition of the original term of imprisonment in determining: (I) Whether a reduction in the defendant's term of imprisonment is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

2. Application of Subsection (b)(1).—In determining the amended guideline range under subsection (b)(1), the court shall substitute only the amendments listed in subsection (c) for the corresponding guideline provisions that were applied when the defendant was sentenced. All other guideline application decisions remain unaffected.

3. Application of Subsection (b)(2).—Under subsection (b)(2), the amended guideline range determined under subsection (b)(1) and the term of imprisonment already served by the defendant limit the extent to which the court may reduce the defendant's term of imprisonment under 18 U.S.C. 3582(c)(2) and this policy statement. Specifically, if the original term of imprisonment imposed was within the guideline range applicable to the defendant at the time of sentencing, the court shall not reduce the defendant's term of imprisonment to a term that is less than the minimum term of imprisonment provided by the amended guideline range determined under subsection (b)(1). For example, in a case in which: (A) The guideline range applicable to the defendant at the time of sentencing was 41 to 51 months; (B) the original term of imprisonment imposed was 41 months; and (C) the amended guideline range determined under subsection (b)(1) is 30 to 37 months, the court shall not reduce the defendant's term of imprisonment to a term less than 30 months.

If the original term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing, a reduction comparably less than the amended guideline range determined under subsection (b)(1) may be appropriate. For example, in a case in which: (A) The guideline range applicable to the defendant at the time of sentencing was 70 to 87 months; (B) the defendant's original term of imprisonment imposed was 56 months (representing a downward departure of 20 percent below the minimum term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing); and (C) the amended guideline range determined under subsection (b)(1) is 57 to 71 months, a reduction to a term of imprisonment of 46 months (representing a reduction of approximately 20 percent below the minimum term of imprisonment provided by the amended guideline range determined under subsection

(b)(1)) would amount to a comparable reduction and may be appropriate.

In no case, however, shall the term of imprisonment be reduced below time served. Subject to these limitations, the sentencing court has the discretion to determine whether, and to what extent, to reduce a term of imprisonment under this section.

4. Supervised Release.—

(A) Exclusion Relating to Revocation.—Only a term of imprisonment imposed as part of the original sentence is authorized to be reduced under this section. This section does not authorize a reduction in the term of imprisonment imposed upon revocation of supervised release.

(B) Modification Relating to Early Termination.—If the prohibition in subsection (b)(2)(C) relating to time already served precludes a reduction in the term of imprisonment to the extent the court determines otherwise would have been appropriate as a result of the amended guideline range determined under subsection (b)(1), the court may consider any such reduction that it was unable to grant in connection with any motion for early termination of a term of supervised release under 18 U.S.C. 3583(e)(1). However, the fact that a defendant may have served a longer term of imprisonment than the court determines would have been appropriate in view of the amended guideline range determined under subsection (b)(1) shall not, without more, provide a basis for early termination of supervised release. Rather, the court should take into account the totality of circumstances relevant to a decision to terminate supervised release, including the term of supervised release that would have been appropriate in connection with a sentence under the amended guideline range determined under subsection (b)(1).

Background: Section 3582(c)(2) of Title 18, United States Code, provides: '[I]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.'

This policy statement provides guidance and limitations for a court when considering a motion under 18 U.S.C. 3582(c)(2) and implements 28 U.S.C. 994(u), which provides: 'If the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.'

Among the factors considered by the Commission in selecting the amendments included in subsection (c) were the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under subsection (b)(1).

The listing of an amendment in subsection (c) reflects policy determinations by the Commission that a reduced guideline range is sufficient to achieve the purposes of sentencing and that, in the sound discretion of the court, a reduction in the term of imprisonment may be appropriate for previously sentenced, qualified defendants. The authorization of such a discretionary reduction does not otherwise affect the lawfulness of a previously imposed sentence, does not authorize a reduction in any other component of the sentence, and does not entitle a defendant to a reduced term of imprisonment as a matter of right.

The Commission has not included in this policy statement amendments that generally reduce the maximum of the guideline range by less than six months. This criterion is in accord with the legislative history of 28 U.S.C. 994(u) (formerly section 994(t)), which states: 'It should be noted that the Committee does not expect that the Commission will recommend adjusting existing sentences under the provision when guidelines are simply refined in a way that might cause isolated instances of existing sentences falling above the old guidelines* or when there is only a minor downward adjustment in the guidelines. The Committee does not believe the courts should be burdened with adjustments in these cases.' S. Rep. 225, 98th Cong., 1st Sess. 180 (1983).

*So in original. Probably should be 'to fall above the amended guidelines'.''.

Reason for Amendment: This amendment makes a number of modifications to *1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range) to clarify when, and to what extent, a reduction in the defendant's term of imprisonment is consistent with the policy statement and is therefore authorized under 18 U.S.C. 3582(c)(2).

The amendment modifies subsection (a) to state the statutory requirement under 18 U.S.C. 3582(c)(2) that a reduction in the defendant's term of imprisonment be consistent with the policy statement. The amendment also modifies subsection (a) to state that, consistent with subsection (b), proceedings under 18 U.S.C. 3582(c)(2) do not constitute a full resentencing of the defendant.

In addition, the amendment amends subsection (a) to clarify circumstances in which a reduction in the defendant's term of imprisonment is not consistent with the policy statement and therefore is not authorized under 18 U.S.C. 3582(c)(2). Specifically, the amendment provides that a reduction in the defendant's term of imprisonment is not consistent with § 1B1.10 and therefore is not authorized under 18 U.S.C. 3582(c)(2) if (1) none of the amendments listed in subsection (c) is applicable to the defendant; or (2) an amendment listed in subsection (c) does not have the effect of lowering the defendant's applicable guideline range. Application Note 1 provides further explanation that an amendment may be listed in subsection (c) but not have the effect of lowering the defendant's applicable guideline range because of the operation of another guideline or statutory provision (e.g., a statutory mandatory minimum term of imprisonment). In such a case, a reduction in the defendant's term of imprisonment is not consistent with § 1B1.10 and therefore is not authorized under 18 U.S.C. 3582(c)(2).

The amendment modifies subsection (b) to clarify the limitations on the extent to which a court may reduce the defendant's term of imprisonment under 18 U.S.C. 582(c)(2) and § 1B1.10. Specifically, in subsection (b)(1) the amendment provides that, in determining whether, and to what extent, a reduction in the defendant's term of imprisonment is warranted, the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (c) had been in effect at the time the defendant was sentenced, substituting only the amendments listed in subsection (c) for the corresponding guideline provisions that were applied when the defendant was sentenced and leaving all other guideline application decisions unaffected.

In subsection (b)(2) the amendment provides further clarification that the court shall not reduce the defendant's term of imprisonment to a term that is

less than the minimum of the amended guideline range, except if the original term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing, a reduction comparably less than the amended guideline range may be appropriate. However, if the original term of imprisonment constituted a non-guideline sentence determined pursuant to 18 U.S.C. 3553(a) and *United States* v. *Booker,* 543 U.S. 220 (2005), a further reduction generally would not be appropriate. The amendment clarifies that in no event may the reduced term of imprisonment be less than the term of imprisonment the defendant has already served. The amendment adds in Application Note 3 examples illustrating the limitations on the extent to which a court may reduce a defendant's term of imprisonment under 18 U.S.C. 3582(c)(2) and § 1B1.10.

The amendment also modifies Application Note 1 to delineate more clearly factors for consideration by the court in determining whether, and to what extent, a reduction in the defendant's term of imprisonment is warranted under 18 U.S.C. 3582(c)(2). Specifically, the amendment provides that the court shall consider the factors set forth in 18 U.S.C. 3553(a), as required by 18 U.S.C. 3582(c)(2), and the nature and seriousness of the danger to any person or the community that may be posed by such a reduction, but only within the limits described in subsection (b). In addition, the amendment provides that the court may consider post-sentencing conduct of the defendant that occurred after imposition of the original term of imprisonment, but only within the limits described in subsection (b).

The amendment makes conforming changes and adds headings to the application notes, and makes conforming changes to the background commentary.

2. Amendment: Section 1B1.10, as amended by Amendment 1, is further amended in subsection (c) by inserting ''Covered Amendments.—'' before ''Amendments''; by striking ''and 702''; and by inserting ''702, and 706 as amended by 711'' before the period.

Reason for Amendment: This amendment expands the listing in § 1B1.10(c) to implement the directive in 28 U.S.C. 994(u) with respect to guideline amendments that may be considered for retroactive application. The Commission has determined that Amendment 706, as amended by Amendment 711, should be applied retroactively because the applicable standards set forth in the background commentary to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range) appear to be met. Specifically: (1) As stated in the reason for amendment accompanying Amendment 706, the purpose of that amendment was to alleviate some of the urgent and compelling problems associated with the penalty structure for crack cocaine offenses; (2) the Commission's analysis of cases potentially eligible for retroactive application of Amendment 706 (available on the Commission's Web site at *http://www.ussc.gov*) indicates that the number of cases potentially involved is substantial, and the magnitude of the change in the guideline range, i.e., two levels, is not difficult to apply in individual cases; and (3) the Commission received persuasive written comment and testimony at its November 13, 2007 public hearing on retroactivity that the administrative burdens of applying Amendment 706 retroactively are manageable. In addition, public safety will be considered in every case because § 1B1.10, as amended by Amendment 712, requires the court, in determining whether and to what extent a reduction in the defendant's term of imprisonment is warranted, to consider the nature and seriousness of the danger to any person or the community that may be posed by such a reduction.

[FR Doc. E7–25483 Filed 12–31–07; 8:45 am]

BILLING CODE 2211–01–P

DEPARTMENT OF STATE

[Public Notice 6049]

Culturally Significant Objects Imported for Exhibition Determinations: ''Afghanistan: Hidden Treasures From the National Museum, Kabul''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Afghanistan: Hidden Treasures from the National Museum, Kabul'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC from on or about May 25, 2008, until on or about September 7, 2008; the Asian Art Museum of San Francisco from on or about October 17, 2008, to on or about January 25, 2009; The Museum of Fine Arts, Houston, from on or about February 22, 2009, to on or about May 17, 2009: and The Metropolitan Museum of Art, New York, from on or about June 15, 2009, to on or about September 20, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 19, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–25519 Filed 12–31–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6050]

Culturally Significant Objects Imported for Exhibition Determinations: ''Gustave Courbet''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Gustave Courbet,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit

objects at The Metropolitan Museum of Art, New York, NY, from on or about February 25, 2008, until on or about May 18, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 26, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–25517 Filed 12–31–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6048]

Culturally Significant Objects Imported for Exhibition Determinations: ''In the Forest of Fontainebleau: Painters and Photographers From Corot to Monet''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''In the Forest of Fontainebleau: Painters and Photographers from Corot to Monet,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about March 2, 2008, until on or about June 8, 2008, and at the Museum of Fine Arts, Houston, Texas, from on or about July 13, 2008, to on or about October 19, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 20, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–25518 Filed 12–31–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–0056]

Hours of Service of Drivers: Dart Transit Company Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; extension of public comment period.

SUMMARY: The FMCSA announces an extension of the comment period until January 25, 2008, for Dart Transit Company's (Dart) application for an exemption from certain commercial motor vehicle driver hours-of-service provisions of the Federal Motor Carrier Safety Regulations. Dart requested an exemption for 200 of its owner-operators from the prohibition against driving after the 14th hour of coming on-duty, following 10 consecutive hours off-duty, and the requirement that drivers using two sleeper-berth (S/B) periods to accumulate the equivalent of 10 consecutive hours off-duty spend at least 8 but less than 10 consecutive hours in the S/B during one of those two periods. The Advocates for Highway and Auto Safety (Advocates) has requested an extension of time for the public comment period because the issues involved require additional time to evaluate. The FMCSA is granting the Advocates' request.

DATES: Comments must be received on or before January 25, 2008.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2007–0056 by any of the following methods:

- *Web Site: http://www.regulations.gov*. Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail*: Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to the ground floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

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

Public participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or Postcard or print the acknowledgement page that appears after submitting comments on-line.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; Telephone: 202–366–4325. E-mail: *MCPSD@dot.gov*.

SUPPLEMENTARY INFORMATION: On November 26, 2007, FMCSA published in the **Federal Register** (72 FR 66021) a notice of application for exemption and request for comments regarding Dart Transit Company (DART). That notice announced a closing date of December 26, 2007, for public comments to the docket. The Advocates for Highway and Auto Safety (Advocates) has requested an extension of time for the public comment period because the issues involved require additional time to evaluate. The FMCSA agrees that the complexity of the issues involved warrant further opportunity for public comment, and is extending the close of the comment period. All comments received before the close of business on January 25, 2008, will be considered and will be available for examination in the docket listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, the FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: December 26, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–25468 Filed 12–31–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–01–9561, FMCSA–05–22194]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 25 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The Notice was published on November 7, 2007. The comment period ended on December 7, 2007.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 25 renewal applications, FMCSA renews the Federal vision exemptions for, Norman E. Braden, Levi A. Brown, Henry L. Chastain, Thomas R. Crocker, Clinton D. Edwards, Gerald W. Fox, Ronald K Fultz, Richard L. Gandee, John C. Holmes, John L. Hynes, John G. Kaye, Richard H. Kind, Bobby G. LaFleur, Robert S. Larrance, John D. McCormick, Thomas C. Meadows, Timothy S. Miller, David A. Morris, Leigh E. Moseman, Gary T. Murray, Richard P. Stanley, Paul D. Stoddard, Robert L. Tankersley, Jr., Scott A. Tetter, and Benny R. Toothman.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: December 27, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–25489 Filed 12–31–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–99–5578, FMCSA–99–5748, FMCSA–01–9258, FMCSA–02–12844, FMCSA–03–14223, FMCSA–03–15892, FMCSA–05–21254, FMCSA–05–21711]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 27 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-

year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The Notice was published on November 15, 2007. The comment period ended on December 17, 2007.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 27 renewal applications, FMCSA renews the Federal vision exemptions for, Thomas E. Adams, Terry J. Aldridge, Lennie D. Baker, Jr., Grady L. Black, Jr., Jerry D. Bridges, William J. Corder, Ralph E. Eckels, Tommy K. Floyd, Gary R. Gutschow, Richard J. Hanna, James J. Hewitt, Carl M. Hill, Albert E. Malley, Eugene P. Martin, Roger J. Mason, David L. Menken, Rodney M. Mimbs, Walter F. Moniowczak, William G. Mote, James R. Murphy, Chris A. Ritenour, Ronald L. Roy, Thomas D. Walden, Thomas E. Walsh, Kevin P. Weinhold, Charles M. Wilkins, and Thomas A. Wise

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: December 27, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–25490 Filed 12–31–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–RSPA–2003–15852]

Pipeline Safety: Workshop on Public Awareness Programs for Pipeline Operators and Location of Line Markers

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of workshop.

SUMMARY: PHMSA will host a workshop to provide stakeholders with an update on public awareness programs for pipeline operators and to discuss the location of line markers. On the first day, PHMSA will share the findings from its review of written public awareness programs. The workshop will also include discussion of potential revisions to the first edition of the American Petroleum Institute (API) Recommended Practice (RP) 1162. Pipeline operators will also share some lessons learned from their implementation of public awareness programs based on RP 1162. On the second day, PHMSA will lead a discussion on the location of line markers.

DATES: The workshop will be held on February 20–21, 2008.

ADDRESSES: The workshop will be held at the Hotel Derek, 2525 West Loop South, Houston, TX 77027. Hotel reservations under the Department of Transportation room block can be made at (713) 297–4323. The meeting room will be posted at the hotel on the day of the workshop.

FOR FURTHER INFORMATION CONTACT: Blaine Keener at (202) 366–0970, or by e-mail at *blaine.keener@dot.gov.*

SUPPLEMENTARY INFORMATION: *Registration:* Members of the public may attend this free workshop. To register for a workshop, select Public Awareness and Pipeline Marker Workshop from *http://primis.phmsa.dot.gov/meetings/.* Hotel reservations must be made by contacting the hotel directly.

Web Casting: The part of the workshop on public awareness programs will be web cast and available for viewing for two months after the workshop. The web cast will be accessible at *http://primis.phmsa.dot.gov/comm/PublicAwarenessWorkshops.htm.*

Background on public awareness programs: Between August 8, 2006, and October 15, 2007, pipeline operators submitted 1,568 public awareness programs to PHMSA for a centralized review. Public awareness programs are required by 49 CFR 192.616 and 49 CFR 195.440 to improve awareness of pipeline safety with four stakeholder audiences: the affected public, emergency officials, local public officials, and excavators. These regulations require operators to follow the guidance of API RP 1162, Public Awareness Programs for Pipeline Operators, First Edition, December 2003.

The review examined each program to determine whether it followed the recommendations of API RP 1162. Aspects of the program that deviated from the recommendation in API RP 1162 were sent to the appropriate pipeline safety agency or agencies for resolution with the pipeline operator. PHMSA will present summary statistics from the centralized review of the programs.

The API typically publishes new editions of recommended practices every five years. The workshop will include discussion about potential revisions to API RP 1162 for the second edition.

The recommendations in API RP 1162 have led some pipeline operators to develop new and innovative approaches to improving pipeline safety awareness among the stakeholder audiences. The workshop will provide pipeline operators with an opportunity to share lessons learned from implementing new ideas.

Background on line markers: The pipeline safety regulations require the use of line markers to alert the public as to the presence of buried pipelines. The regulation applicable to gas pipelines is found at 49 CFR 192.707. The regulation applicable to hazardous liquid pipelines is found at 49 CFR 195.410. The workshop will include discussion about the appropriate interval between markers and conditions which make it impractical to use markers.

Issued in Washington, DC, on December 21, 2007.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. E7–25433 Filed 12–31–07; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 255)]

Union Pacific Railroad Company—Abandonment—in Carver and Scott Counties, MN

On December 13, 2007, Union Pacific Railroad Company (UP) filed with the Board an application for permission to abandon its Chaska Industrial Lead, extending from milepost 38.6, at Merriam, to milepost 33.0, on the east side of Chaska, a distance of 5.6 miles, in Carver and Scott Counties, MN (the line). The line includes no stations and traverses United States Postal Service ZIP Codes 55315, 55318, and 55379.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it. The applicant's entire case for abandonment (case-in-chief) was filed with the application.

This line of railroad has appeared on UP's system diagram map in category 1 since July 16, 2007.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed abandonment, or protests (including the protestant's entire opposition case), by January 27, 2008. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (49 CFR 1152.28) and any request for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by January 28, 2008. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27). Applicant's reply to any opposition statements and its response to trail use requests must be filed by February 11, 2008. *See* 49 CFR 1152.26(a).

Persons opposing the abandonment who wish to participate actively and fully in the process should file a protest. Persons who oppose the abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25. Persons interested only in seeking public use or trail use conditions should also file comments.

In addition, a commenting party or protestant may provide: (i) An offer of financial assistance (OFA) for continued rail service under 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner); (ii) recommended provisions for protection of the interests of employees; (iii) a request for a public use condition under 49 U.S.C. 10905; and (iv) a statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 255) and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Gabriel S. Meyer, Assistant General Attorney, Union Pacific Railroad Company, 1400 Douglas Street, STOP 1580, Omaha, NE 68179. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Each OFA must be accompanied by a $1,300 filing fee. *See* 49 CFR 1002.2(f)(25). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is set forth above.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Affairs at (202) 245–0230 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 21, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–25348 Filed 12–31–07; 8:45 am]

BILLING CODE 4915–01–P

Federal Register

Wednesday,
January 2, 2008

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2006–0359; FRL–8509–6]

RIN 2060–AM36

National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing national emission standards for hazardous air pollutants for two area source categories (iron foundries and steel foundries). The requirements for the two area source categories are combined in one subpart. The final rule establishes different requirements for foundries based on size. Small area source foundries are required to comply with pollution prevention management practices for metallic scrap, the removal of mercury switches, and binder formulations. Large area source foundries are required to comply with the same pollution prevention management practices as small foundries in addition to emissions standards for melting furnaces and foundry operations. The final standards reflect the generally achievable control technology and/or management practices for each subcategory.

DATES: This final rule is effective on January 2, 2008. The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Federal Register as of January 2, 2008.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0359. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., confidential business information 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 NESHAP for Iron and Steel Foundries Area Sources Docket, at the EPA Docket and Information Center, 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. Conrad Chin, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–1512; fax number: (919) 541–3207; e-mail address: *chin.conrad@epa.gov*.

SUPPLEMENTARY INFORMATION:

Outline. The information in this preamble is organized as follows:

I. General Information
  A. Does this action apply to me?
  B. Where can I get a copy of this document?
  C. Judicial Review
II. Background Information
III. Summary of the Final Rule and Changes Since Proposal
  A. What are the applicability provisions and compliance dates?
  B. What emissions standards are in the form of pollution prevention management practices?
  C. What are the requirements for small iron and steel foundries?
  D. What are the requirements for large iron and steel foundries?
IV. Summary of Comments and Responses
  A. Applicability and Compliance Dates
  B. Pollution Prevention Management Practices
  C. Requirements for Large Iron and Steel Foundries
  D. Implementation and Enforcement
  E. Definitions
  F. Impact Estimates
  G. Miscellaneous
V. Summary of Impacts of the Final Rule
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 Concerning Regulations 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
  K. Congressional Review Act

I. General Information

A. Does this action apply to me?

The regulated category and entities potentially affected by this final action include:

Category	NAICS code[1]	Examples of regulated entities
Industry	331511	Iron foundries. Iron and steel plants. Automotive and large equipment manufacturers.
	331512	Steel investment foundries.
	331513	Steel foundries (except investment).

[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 63.10880 of subpart ZZZZZ (National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources). 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. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through EPA's Technology Transfer Network (TTN). A copy of this final 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.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by March 3, 2008. Under section 307(d)(7)(B) of the CAA, only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) also provides a mechanism for us to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

II. Background Information

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. *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). Among other things, the court order, as amended on October 15, 2007, requires that EPA complete standards for nine area source categories by December 15, 2007. We are issuing this final rule in response to the court order. Other final NESHAP will complete the required regulatory action for the remaining area source categories.

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.'' As explained in the preamble to the proposed NESHAP, we are issuing emission standards based on GACT for the control of the Urban HAP for which the source category was listed (compounds of chromium, lead, manganese, and nickel) that are emitted from metal melting furnaces at area source facilities classified as large iron and steel foundries.

In addition, we are establishing pollution prevention management practices based on GACT that apply to all area source foundries. The pollution prevention management practices reduce HAP emissions of organics, metals, and mercury generated from furnace charge materials and prohibit the use of methanol as a component of binder formulations in certain applications. Another pollution prevention management practice requires that foundries keep a record of the annual quantity and composition of each HAP-containing chemical binder or coating material used to make molds and cores. These records may assist area source foundry owners or operators in their pursuit of pollution prevention opportunities.

III. Summary of the Final Rule and Changes Since Proposal

A. What are the applicability provisions and compliance dates?

The final NESHAP applies to each new and existing iron and steel foundry that is an area source of HAP. The final rule allows 2 years (instead of 1 year as proposed) for existing foundries to comply with the pollution prevention standards for mercury. As proposed, all foundries must comply with the pollution prevention management practices for scrap management and binder formulations by January 2, 2009. A large existing foundry must comply with applicable emissions limitations and operation and maintenance requirements no later than 2 years after initial classification.[3]

As proposed, different rule requirements apply to facilities classified as large foundries or small foundries. Based on public comment, we have revised the threshold level in the definitions of large foundry'' and ''small foundry'' as they apply to existing affected sources. For an existing affected source, we are defining a ''small foundry'' as an iron and steel foundry that has an annual metal melt production of 20,000 tons or less (instead of 10,000 tons). An existing affected source that has an annual metal melt production greater than 20,000 tons is classified as a large foundry. For new affected sources, we have revised the basis for determining the threshold. For a new affected source, we are defining a ''small foundry'' as an iron and steel foundry that has an annual metal melt capacity of 10,000 tons or less. A new affected source that has an annual metal melt capacity greater than 10,000 tons is classified as a large foundry. The term, ''annual metal melt capacity'' is defined in the final rule as:

* * * the lower of the total metal melting furnace equipment melt rate capacity assuming 8,760 operating hours per year summed for all metal melting furnaces at the foundry or, if applicable, the maximum permitted metal melt production rate for the iron and steel foundry calculated on an annual basis. Unless otherwise specified in the permit, permitted metal melt production rates that are not specified on an annual basis must be annualized assuming 24 hours per day, 365 days per year of operation. If the permit limits the operating hours of the

[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.

[3] If additional time is needed to install controls, the owner or operator of an existing source can, pursuant to 40 CFR 63.6(i)(4), request from the permitting authority up to a 1-year extension of the compliance date. See CAA section 112(i)(3)(B).

furnace(s) or foundry, then the permitted operating hours are used to annualize the maximum permitted metal melt production rate.

Each existing foundry must determine its initial classification as a small or large foundry using production data for calendar year 2008. After the initial classification, an existing affected source classified as a small foundry that exceeds the 20,000 ton annual metal melt production threshold during the preceding calendar year must comply with the applicable requirements for a large foundry within 2 years of the date of the foundry's notification that the annual metal melt production exceeded 20,000 tons (provided the facility has never been classified as a large foundry). For example, if an existing small foundry produces more than 20,000 tons of melted metal from January 1 through December 31, 2009, that facility is required to comply with the requirements for a large foundry by January 2012. If the small foundry has previously been classified as a large foundry, the facility must comply with the requirements for a large foundry immediately (no later than the date of the foundry's most recent notification that the annual melt production exceeded 20,000 tons). If an existing facility is initially classified as a large foundry (or a small foundry becomes a large foundry), that facility must meet the applicable requirements for a large foundry for at least 3 years, even if its annual metal melt production falls below 20,000 tons. After 3 years, the foundry may reclassify the facility as a small foundry provided the annual metal melt production for the preceding calendar year was 20,000 tons or less. A large foundry that is reclassified as a small foundry must continue to comply with the applicable requirements for small foundries immediately (no later than the date the foundry notifies the Administrator of the reclassification). A large foundry that is reclassified as a small foundry and then exceeds an annual metal melt production of 20,000 tons for a subsequent calendar year, must comply with the applicable requirements for large foundries immediately (no later than the date the foundry notifies the Administrator of the reclassification).

The owner or operator of a new area source foundry must comply with the rule requirements by January 2, 2008 or upon startup, whichever is later. Each new foundry must determine its initial classification as a small or large foundry based on its annual metal melting capacity at startup. Following the initial determination, a small foundry that increases their annual metal melting capacity to greater than 10,000 tons must comply with the requirements for a large foundry no later than the startup date for the new equipment or if applicable, the date of issuance for their revised State or Federal operating permit. If the new foundry is initially classified as a large foundry (or a small foundry subsequently becomes a large foundry), the owner or operator must comply with the requirements for a large foundry for at least 3 years before reclassifying the facility as a small foundry. After 3 years, the owner or operator may reclassify the facility as a small foundry provided the annual metal melting capacity is 10,000 tons or less. If a large foundry is reclassified as a small foundry, the owner or operator must comply with the requirements for a small foundry no later than the date the melting equipment was removed or taken out of service or if applicable, the date of issuance for their revised State or Federal operating permit.

B. What emissions standards are in the form of pollution prevention management practices?

1. Metallic Scrap

The material specification requirements are based on pollution prevention and require removal of HAP-generating materials from metallic scrap before melting. All foundries must prepare and operate according to written material specifications for one of two equivalent compliance options.

One compliance option requires foundries to prepare and operate pursuant to written material specifications for the purchase and use of only metal ingots, pig iron, slitter, or other materials that do not include metallic scrap from motor vehicle bodies, engine blocks, oil filters, oily turnings, lead components, chlorinated plastics, or free liquids. The term ''free liquids'' is defined as material that fails the paint filter test by EPA Method 9095B (incorporated by reference—see 40 CFR 63.14) in EPA Publication SW–846, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods''. A new provision states that the requirement for no free liquids does not apply if the owner or operator can demonstrate that the free liquid results from scrap exposed to rain.

The second compliance option requires foundries to prepare and operate pursuant to written material specifications for the purchase and use of scrap that has been depleted (to the extent practicable) of organics and HAP metals in the charge materials used by the foundry. Except for a cupola equipped with an afterburner, metallic scrap charged to a scrap preheater or metal melting furnace must be depleted (to the extent practicable) of used oil filters, chlorinated plastic parts, accessible lead-containing components, and free liquids. For scrap charged to a cupola metal melting furnace that is equipped with an afterburner, the material specifications must include requirements for metal scrap to be depleted (to the extent practicable) of chlorinated plastics, accessible lead-containing components, and free liquids. In response to comments, we deleted a provision in the proposed rule that would have exempted the routine recycling of baghouse bags or other internal process or maintenance materials in the furnace.

Either material specification option will achieve a similar HAP reduction impact. Foundries may have certain scrap subject to one option and other scrap subject to another option provided the metallic scrap remains segregated until charge make-up.

2. Mercury Switch Removal

The final standards for mercury are based on pollution prevention and require a foundry 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. The final rule clarifies that the requirements do not apply to scrap providers who do not provide motor vehicle scrap or to contracts and shipments that do not include motor vehicle scrap. Foundries 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. An equivalent compliance option is for the foundry 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 recover only specialty scrap that does not contain mercury switches. Provisions are also included for scrap that does not contain motor vehicle scrap.

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 NVMSRP [4] is an approved program under this final standard as is the mercury switch recovery program implemented by the State of Maine. Facilities choosing to use the NVMSRP as a compliance option must assume all of the responsibilities as described in the MOU.

Foundries may also obtain scrap from scrap providers participating in other programs. To do so, the facility owner or operator must 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).

Facilities that purchase motor vehicle scrap from scrap providers that do not participate in an EPA-approved mercury switch removal program must prepare and operate pursuant to and in conformance with a site-specific plan 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 must be submitted to the Administrator for approval and 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, 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 may 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 count towards the 80 percent goal.

In response to comments, we have revised the final rule to include provisions designed to increase the effectiveness and enforceability of the EPA-approved programs. The requirements for a site-specific plan specify that the owner or operator must operate according to the plan during the review process, operate according to the plan at all times after approval, and address any deficiency identified by the Administrator or delegated authority within 60 days following disapproval of a plan. The owner or operator may request approval to revise the plan and may operate according to the revised plan unless and until the revision is disapproved by the Administrator or delegated authority. A new provision also requires the site-specific plan to include documentation of direction to appropriate staff to communicate to suppliers throughout the supply chain the need to promote the removal of mercury switches from end of life vehicles. The owner or operator must provide examples of materials that are used for outreach to suppliers at the request of the Administrator or delegated authority. We have also clarified that the information in the semiannual progress reports for each scrap provider can be submitted in aggregated form and does not have to be submitted for each shipment. We have also revised the option for approved mercury programs to require that foundries develop and maintain onsite a written plan demonstrating the manner through which the facility is participating in the EPA-approved program. The plan must include facility-specific implementation elements, corporate-wide policies, and/or efforts coordinated by a trade association as appropriate for each facility. The plan must include documentation of direction to appropriate staff to communicate to suppliers throughout the scrap supply chain the need to promote the removal or mercury switches from end-of-life vehicles. The owner or operator also must conduct periodic inspections or provide other means of corroboration to ensure that scrap providers are aware of the need for and are implementing appropriate steps to minimize the presence of mercury in scrap from end-of-life vehicles.

An equivalent compliance option is provided for foundries that recover specialty metals. The option requires the facility to certify that the only materials they are charging from motor vehicle scrap are materials recovered for their specialty alloy content, such as chromium in certain exhaust systems, and these materials are known not to contain mercury switches. We have added to the final rule certification requirements for facilities that do not use motor vehicle scrap containing mercury switches.

Records are required to document conformance with the material specifications for metallic scrap, restricted scrap, and mercury switches. Each foundry is required to submit semiannual reports that clearly identify any deviation from the scrap management requirements. These reports can be submitted as part of the semiannual reports required by 40 CFR 63.10 of the general provisions.

3. Binder Formulations

For each furfuryl alcohol warm box mold or core making line, new and existing foundries must use a binder chemical formulation that does not use methanol as a specific ingredient of the catalyst formulation. This requirement does not apply to the resin portion of the binder system. This final rule includes recordkeeping requirements to document conformance with this requirement.

C. What are the requirements for small iron and steel foundries?

This final rule requires each new and existing affected source that is classified as a small foundry to comply with the pollution prevention management practices for metallic scrap, mercury switches, and binder formulations described above. The owner or operator is required to submit an initial notification of applicability no later than May 1, 2008 (or within 120 days after the foundry becomes subject to the standard; see 40 CFR 63.9(b)(2)). The foundry is also required to submit an initial written notification to the Administrator that identifies their facility as a small (or large) foundry; this notification is due no later than January 2, 2009. Subsequent notifications are required within 30 days for a change in

[4] For details see: *http://www.epa.gov/mercury/switch.htm*. In particular, see the signed Memorandum of Understanding.

process or operations that reclassifies the status of the facility and its compliance obligations. A small foundry is also required to submit a notification of compliance status according to the requirements in 40 CFR 63.9(h) of the General Provisions (40 CFR part 63, subpart A). The notification of compliance status must include certifications of compliance for the pollution prevention management practices. This final rule also requires small foundries to keep records of monthly metal melt production and report any deviation from the pollution prevention management practices in the semiannual report required by 40 CFR 63.10 of the NESHAP general provisions.

We are also requiring small foundries to keep a record of the annual quantity and composition of each HAP-containing chemical binder or coating material used to make molds and cores. These records must be copies of purchasing records, Material Data Safety Sheets, or other documentation that provide information on binder materials. The purpose of this requirement is to encourage foundries to investigate and use nonHAP binder and coating materials wherever feasible.

D. What are the requirements for large iron and steel foundries?

This final NESHAP requires new and existing affected sources that are classified as large foundries to comply with the pollution prevention management practices described in section III.B of this preamble. In addition, large foundries are required to operate capture and collection systems for metal melting furnaces and comply with emissions standards, operation and maintenance, monitoring, testing, and recordkeeping and reporting requirements.

1. Emissions Limitations

New and existing affected sources that are classified as large foundries must comply with emissions limits for metal melting furnaces. A metal melting furnace includes cupolas, EAF, EIF, or other similar devices (excluding holding furnaces, argon oxygen decarburization vessels, or ladles that receive molten metal from a metal melting furnace, to which metal ingots or other materials may be added to adjust the metal chemistry). The final emissions limits for metal melting furnaces are:

- 0.8 pounds of PM per ton of metal charged or 0.06 pounds of total metal HAP per ton of metal charged for each metal melting furnace at an existing iron and steel foundry.
- 0.1 pounds of PM per ton of metal charged or 0.008 pounds of total metal HAP per ton of metal charged for each metal melting furnace at a new iron and steel foundry.

The owner or operator of a new or existing affected source may choose to comply with these emission limits utilizing emissions averaging as specified in this rule so that the production-weighted average emissions from all metal melting furnaces at the foundry for any calendar month meet the applicable emissions limit.

The proposed rule included operating parameter limits that applied to PM control devices applied to emissions from a metal melting furnace. We eliminated the operating limit for baghouse pressure drop in response to comments because this operating parameter was determined not to be an appropriate indicator of performance. We have revised the other operating limits to apply to PM control devices at new affected sources instead of existing affected sources to minimize costs to existing sources associated with monitoring system retrofits. For a wet scrubber, a foundry must maintain the 3-hour average pressure drop and scrubber water flow rate at or above the minimum levels established during the initial or subsequent performance test. For an electrostatic precipitator, a foundry must maintain the voltage and secondary current (or total power input) to the control device at or above the level established during the initial or subsequent performance test. The final rule does not include an operating limit for baghouses at existing or new affected sources. The final NESHAP also includes a fugitive emissions opacity limit of 20 percent for each building or structure housing iron and steel foundry operations revised since proposal to allow one 6-minute average per hour that does not exceed 30 percent. Foundry operations covered by the fugitive emissions opacity limit include all process equipment and practices used to produce metal castings for shipment including mold or core making and coating; scrap handling and preheating; metal melting and inoculation; pouring, cooling, and shakeout; shotblasting, grinding and other metal finishing operations; and sand handling.

2. Operation and Maintenance Requirements

The owner or operator is required to prepare and operate by an O&M plan for each control device used to comply with the standards. Any other O&M, preventative maintenance, or similar plan which satisfies the specified requirements may be used to comply with the requirements for an O&M plan.

3. Monitoring Requirements

In response to comments, we have revised the proposed monitoring requirements in several respects. The monitoring requirements in the final rule apply to new and existing affected sources that are classified as large foundries (those having an annual metal melt production greater than 20,000 tons instead of 10,000 tons in the proposed rule). We are requiring that large foundries at new and existing affected sources conduct initial and periodic inspections of PM control devices (baghouses, wet scrubbers, and electrostatic precipitators) in lieu of the proposed monitoring requirements. As an alternative means of compliance, the owner or operator of an existing area source may use a bag leak detection system to demonstrate continuous compliance with a PM or total metal HAP emissions limit instead of complying with the inspection requirements for baghouses.

We are requiring that large iron and steel foundries at new affected sources install and operate CPMS to measure and record operating parameters of wet scrubbers and electrostatic precipitators used to comply with PM or total metal HAP emissions limit. All CPMS must be operated and maintained according to the O&M plan. These foundries are also subject to control device operating limits that are the same as the proposed operating limits for wet scrubbers and electrostatic precipitators. No operating limits apply to baghouses at existing or new affected sources.

Bag leak detection systems are required for positive or negative pressure baghouses at a new area source foundry. If a bag leak detection system is used, the owner or operator must prepare and operate pursuant to a monitoring plan for each bag leak detection system; specific requirements for the plan are included in this final rule. For additional information on bag leak detection systems that operate on the triboelectric effect, see ''Fabric Filter Bag Leak Detection Guidance'', U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, September 1997, EPA–454/R–98–015, National Technical Information Service (NTIS) publication number PB98164676. This document is available from the NTIS, 5385 Port Royal Road, Springfield, VA 22161.

Monthly inspections of the equipment that is important to the performance of the capture system are also required. The owner or operator must repair any defect or deficiency in the capture

system as soon as practicable but no later than 90 days and record the results of each inspection and the date of any repair.

If a large foundry complies with the emissions limits for furnaces using emissions averaging, the final NESHAP requires the owner or operator to demonstrate compliance on a monthly basis. The facility must determine the weighted average emissions from all metal melting furnaces at the foundry using an equation included in this final rule. We have reduced the default emissions factor for uncontrolled induction furnaces in an emissions averaging group from 3 pounds of PM per ton of metal charged (lb/ton) to 1.6 lb/ton. The owner or operator must maintain records of the monthly calculations and report any exceedance in the semiannual report.

4. Performance Tests

We are requiring that each large foundry conduct a performance test to demonstrate initial compliance with the PM or total metal HAP emissions limit and the opacity limit for fugitive emissions within 180 days of the applicable compliance date and submit the results in the notification of compliance status. In lieu of conducting an initial performance test to demonstrate compliance with the applicable PM or total metal HAP limit for metal melting furnaces, the owner or operator of an existing foundry is allowed to submit the results of a previous performance test provided the test was conducted within the last 5 years using the methods and procedures specified in the rule and either no process changes have been made since the test, or the test results reliably demonstrate compliance with the applicable emissions limit despite process changes. If the owner or operator does not have a previous performance test that meets the rule requirements, a test must be conducted within 180 days of the compliance date. Special provisions also are included for testing electric induction furnaces (EIFs) at existing foundries. Performance tests are required for all new area source foundries. Subsequent tests for furnaces are required every 5 years and each time an operating limit is changed or a process change occurs that is likely to increase metal HAP emissions from the furnace. Provisions are included in this final rule for determining compliance with PM or total metal HAP emissions limits in a lb/ton of metal charged format and for establishing control device operating parameter limits. This final rule also includes requirements to perform opacity testing by Method 9 (40 CFR part 60, appendix A–4) every 6 months. This final rule describes the methods and requirements for these semiannual opacity observations. In response to comments, we have revised the proposed rule to allow an alternative to the Method 9 test. The alternative allows the owner or operator to conduct semiannual VE observations by Method 22 (40 CFR part 60, appendix A–7). If visible fugitive emissions from foundry operations occur for more than 10 percent of the Method 22 observation period (i.e., more than a cumulative 6 minutes of the 1-hour period), the owner or operator must conduct a Method 9 test of the fugitive emissions from foundry operations as soon as possible, but no later than 15 days after the Method 22 test to determine compliance with the opacity limit.

5. Recordkeeping and Reporting Requirements

The owner or operator is required to submit an initial notification that identifies the facility as a large (or small) foundry. In addition, the owner or operator is required to comply with certain requirements of the General Provisions (40 CFR part 63, subpart A), which are identified in Table 3 of this final rule. The General Provisions include specific requirements for notifications, recordkeeping, and reporting, including provisions for a startup, shutdown, and malfunction plan/reports required by 40 CFR 63.6(e). In addition to the records required by 40 CFR 63.10, all foundries are required to maintain records to document conformance with the pollution prevention management practice emissions standards for metallic scrap, mercury switch removal, and binder formulations as well as to maintain records of annual melt production and corrective action(s). Large foundries must also prepare and operate according to the O&M plan and record monthly compliance calculations for metal melting furnaces that comply using emissions averaging, if applicable. The owner or operator must submit semiannual reports that provide summary information on excursions or exceedances (including the corrective action taken), monitor downtime incidents, and deviations from management practices or O&M requirements according to the requirements in 40 CFR 63.10.

We are also requiring all foundries to keep a record of the annual quantity and composition of each HAP-containing chemical binder or coating material used to make molds and cores. These records must be copies of purchasing records, Material Data Safety Sheets, or other documentation that provide information on binder materials. The primary purpose of this requirement is to encourage foundries to investigate and use nonHAP binder and coating materials wherever feasible.

6. Exemption From Title V Permitting Requirements

For the reasons discussed in the preamble to the proposed rule, we are exempting iron foundries and steel foundries area source categories from title V permitting requirements. Although the final rule exempts facilities that do not have a title V permit from the requirement to obtain a permit for the purposes of this rule, sources that already have a title V permit generally must include the requirements of this rule through a permit reopening or at renewal according to the requirements of 40 CFR part 70 and the title V permit program.

IV. Summary of Comments and Responses

We received a total of 37 comments on the proposed area source NESHAP from 31 companies, trade associations, and anonymous members of the public and from 6 States and State associations during the public comment period (September 17, 2007 to November 1, 2007). A public hearing was held on October 2, 2007, where we received testimony from two industry representatives. Sections IV.A through IV.G of this preamble provide responses to the public comments received on the proposed NESHAP, including our rationale for changes made as a result of the comments.

A. Applicability and Compliance Dates

Comment: Nine commenters stated that EPA should consider a higher plant size threshold of 15,000 tons per year (tpy) of melted metal because of the significant economic burden associated with the proposed rule. In addition, one commenter said the industry subcategorization threshold should be ''significantly above'' 15,000 tpy. Another commenter stated that it would be difficult to justify the proposed rule for foundries with a production of 30,000 tpy, and that it is not cost-effective to require controls on foundries with a melt production less than 15,000 tpy. One commenter recommended a threshold of 20,000 tpy and two commenters said that the threshold should be ''significantly above'' 30,000 tpy. One commenter opposed the rule as proposed and recommended that EPA reconsider the proposed size threshold of 10,000 tpy.

One commenter supported the co-proposal which would implement only the pollution prevention management practices. The commenter stated that foundries are adequately regulated by existing Federal, State, and local regulations and the proposed rule would impose significant burden without significant environmental improvement.

Response: Based on our consideration of comments, including the combined effect of the emission and cost impacts on both the nationwide cost-effectiveness and the economic impacts of the rule, we concluded that the proposed rule using a 10,000 tpy threshold for new and existing affected sources that are classified as large foundries may not be appropriate. Based on the revised impact analysis, we determined that the most appropriate size threshold for existing affected sources classified as large foundries is 20,000 tpy. However, we found no basis for increasing the size threshold for new affected sources. New affected sources do not have the same retrofit issues as existing affected sources. Moreover, there are existing affected sources with metal melt production of 10,000 tpy that operate controls. Therefore, we have retained the 10,000 tpy threshold at which a new affected source is classified as a large foundry.

Comment: One commenter requested that EPA clarify that the rule does not apply to foundries that produce nonferrous metals where nonferrous metal means ''any pure metal other than iron or any metal alloy for which a metal other than iron is its major constituent by percent in weight.''

Response: We agree. The types of facilities identified by the commenter are covered under other source categories depending on the type of metal produced (e.g., secondary nonferrous metals, secondary aluminum, secondary copper, etc.). In response to this comment, we have added a definition of ''nonferrous metal'' to the final rule and revised the definition of ''iron and steel foundry'' to clarify that nonferrous metal in scrap, metal melting furnaces, and foundry operations is not covered by the rule.

Comment: Twelve commenters requested 3 years to comply with the mercury switch removal program to allow for the program to develop based on participation by the larger steel producers. Another commenter requested 5 years to comply with the mercury switch removal program.

Response: We agree that the typical area source foundry does not have the financial resources and market force over its scrap providers when compared with the much larger mini-mills. The area source foundries purchase only a small fraction of the national supply of scrap from end-of-life vehicles; the vast majority is used in steelmaking. Over time, we expect many more dismantlers will join the National Vehicle Mercury Switch Recovery Program (NVMSRP), and even the smaller scrap providers will find it to their advantage to participate. We believe that an appropriate solution to the difficulties identified by the commenters is to allow more time for these area source foundries to comply with the mercury requirements. Consequently, we are revising the rule to allow additional time (up to 2 years) to comply with the pollution prevention requirements for mercury.

B. Pollution Prevention Management Practices

1. Requirements for Metallic Scrap

Comment: Three commenters stated that the phrase ''to the extent practicable'' makes the requirements in the scrap specifications unenforceable. The commenters recommended that EPA either define the term or establish concrete criteria. One of the commenters recommended that for scrap containing free liquid, EPA should define ''to the extent practicable'' as scrap failing the paint filter test, similar to § 63.10885(a)(1). Another of the commenters asks what ''to the extent practicable'' means and recommends that the phrase ''according to standard industry practice'' be used instead; this would make the foundry and electric arc furnace (EAF) rules more consistent.

Response: The commenters are referring to the term, ''to the extent practicable'' as used in § 63.10885(b)(2) of the proposed rule. We used this term to demonstrate our understanding that furnace charge materials can not be depleted of 100 percent of the organics and HAP metals or the presence of used oiled filters, chlorinated plastic parts, accessible lead-containing components, and free liquids. We do not see the need to codify a definition of ''practicable'' but note here that our intent is that something is practicable if it is capable of being put into practice and is feasible. However, we believe that the term ''standard industry practice'' does not have a significantly clearer meaning, and in fact may not result in as much removal. We are replacing the term in the final EAF rule with the term ''to the extent practicable'' as it relates to the removal of lead-containing components such as batteries and wheel weights. Therefore, we decided not to revise the proposed rule for foundries to replace ''to the extent practicable'' with ''standard industry practice.''

Comment: One commenter stated that the requirements for metallic scrap management in the proposed rule should be the same as for the EAF rule in that the pollution prevention plan should have Administrator approval and should require compliance inspections and corrective action.

Response: The requirements for scrap management under the proposed foundries rule differ from the requirements for scrap management under the proposed EAF rule because we determined that GACT for the iron foundries and steel foundries area source categories is represented by written material specifications. The proposed area source rule for foundries requires that the facility operate by written specifications for the purchase and use of specified material or of only scrap that has been depleted of organics and HAP metals. These written specifications must be kept onsite and be readily available; consequently, they can be reviewed at any time by EPA or the delegated agency for completeness and for compliance with the rule's requirements. The owner or operator must maintain records demonstrating compliance with these requirements and must submit a certification of compliance to that effect. We continue to believe that these written material specifications represent GACT for iron and steel foundries, and the additional requirements recommended by the commenter are not warranted and would be unnecessarily burdensome for the large population of small area source foundries.

Comment: One commenter stated that the proposed rule must be revised to require the facility's owner or operator to ensure the ''baghouse bags, internal process materials and maintenance materials'' that are charged in the foundry do not contain organics, HAP metals, chlorinated plastics, and free organic liquids. The commenter explained that under § 63.10885(a)(1), if an inspector found organics, HAP metals, chlorinated plastics or free organic liquids in charge materials, the inspector would need to demonstrate that these wastes do not stem from ''internal process materials or maintenance materials.'' The commenter stated that this type of loophole will make enforcement difficult.

Response: We agree with the commenter that the provision exempting baghouse bags, internal process materials and maintenance materials from scrap management requirements is not needed in this rule

and have deleted the provision from the final rule.

Comment: One commenter requested clarification on the limitations for scrap managed using a scrap preheater equipped with an afterburner.

Response: We have revised the proposed rule to clarify that the limitations for metallic scrap are the same for all scrap preheaters and metal melting furnaces whether or not the preheater or furnace (except for a cupola) is equipped with an afterburner. A different set of limitations for metallic scrap applies only to cupolas with afterburners.

Comment: One commenter stated that it is virtually impossible to ensure no free liquids on scrap received when it rains during the transport of the scrap. The commenter stated that the impact of this requirement has been underestimated.

Response: Our intent in prohibiting free liquids was to minimize the presence of organic liquids. We have clarified in the final rule that the requirement for no free liquids does not apply if the owner or operator can demonstrate that the free liquid is water that resulted from scrap exposure to rain.

2. Requirements for Mercury Switch Removal

Comment: One commenter requested that EPA establish mercury emission performance standards to supplement the scrap management program. The commenter recommended that EPA adopt emissions limits (effective in 2010) from the New Jersey standards which require a mercury limit of 35 milligrams per ton (mg/ton) of steel produced or a reduction of least 75 percent at the exit of the mercury control system. The commenter stated that the rule allows facilities time to reduce emissions by removing sources of mercury from the scrap they process but requires additional control if the source separation programs are not sufficient to meet the emissions limit. The commenter said that one New Jersey foundry had already installed an activated carbon injection system for mercury control and a baghouse for the cupola; mercury emission test results show mercury reductions greater than 90 percent. The commenter argued that such an emissions limit is needed to determine the success of the source separation program and the need for add-on controls for melters.

Three commenters recommended that the final rule include testing and monitoring to verify the effectiveness of the mercury switch source reduction program. Two commenters stated that the final rule should require facilities to test emissions within 6 months of the final rule to establish a baseline for each facility. One of these commenters also stated that percent reduction targets and timelines be included in the final rule along with a sampling program. The third commenter requested that the final rule include performance or stack testing (inlet/outlet) and baghouse hopper dust analysis to confirm and demonstrate reduced mercury inputs and emissions. This commenter stated that baghouse hopper dust testing is used in some States and EPA should evaluate State requirements to develop national minimum requirements.

Two of the commenters stated that there are monitoring technologies that are adaptable for use by any facility in this industry. The commenters noted that batch process emissions are tested and monitored in many industrial sectors, and EPA has established emission standards for many batch processes without requiring the use of continuous monitors, including Pesticide Active Ingredient Manufacturing and Miscellaneous Organic Chemical Manufacturing. The commenters also said that EPA has recently promulgated the ''sorbent tube'' method for sampling stack gases at coal-fired power plants (40 CFR part 75, appendix K). The commenters explained that because this method of monitoring mercury is capable of sampling flue gases over any period of time (hours or even days), there appears to be little impediment to using this method to sample ''batch'' processes like those at foundries. There are also several statistical sampling techniques that account for the variability of emissions.

Response: We understand from the commenter that there is one major source foundry with a cupola that has installed emission controls for mercury. However, we are not aware that any of the more than 400 area source iron and steel foundries for which we have emission control information have installed mercury emission controls, and consequently, we do not believe that such controls represent GACT for area sources. On the other hand, pollution prevention practices have been used to reduce mercury emissions at foundries and similar sources, such as EAF steelmaking facilities, and these practices have been demonstrated to be successful at reducing mercury emissions. We determined that the pollution prevention requirements for mercury were economically and technologically feasible and concluded they represent GACT for iron and steel foundries that are area sources.

As part of the GACT determination, we concluded that it was not feasible to prescribe or enforce an emission limit for mercury because mercury emissions are highly variable, and we have insufficient information to determine an emission limit that might be achieved on a continuing basis. On the other hand, the pollution prevention approach quantifies the reduction in mercury release to the environment by requiring that the amount of mercury recovered from end-of-life vehicles be reported. This type of recordkeeping and reporting is an important monitoring component of the rule and provides assurance that the requirements are achieving mercury reductions. The monitoring for mercury recommended by the commenters is not appropriate because it is not related to the rule requirements and provides no information related to enforcing the rule. We have chosen monitoring requirements that are applicable to the pollution prevention requirements in the rule.

Comment: Three commenters recommended that the final rule include enforceable measures of accountability to ensure the effectiveness of the collection programs. The commenters stated that these measures should include written documentation and audits of the participation of suppliers and evaluation of switch recovery rates. One commenter recommended a provision for expectations that a certain percentage of switches will be collected from the vehicles and another commenter recommended quantifiable measures such as the fraction of switches collected from the vehicles. Both commenters stated that the final rule should include consequences if the programs do not meet their goals.

One commenter was concerned about using an estimate of the percentage of mercury switches removed to determine whether an approved plan should continue to be approved because the estimate of the percentage of mercury switches removed is highly uncertain and dependant on many assumptions. The commenter stated that determining the effectiveness of site-specific mercury switch removal programs by comparing uncertain statistics with an aggressive removal goal (80 percent) may cause effective programs to have their approval revoked.

Response: We determined at proposal that GACT for mercury emissions was the pollution prevention practice of removing mercury switches from end-of-life vehicles before the vehicles were crushed and shredded for use. GACT would be implemented by foundry owners purchasing scrap only from

scrap providers that were participating in an EPA-approved program for switch removal, operating pursuant to an EPA-approved site-specific plan (of equal effectiveness to an EPA-approved program) that ensured scrap providers had removed mercury switches, or by not melting scrap from end-of-life vehicles. We determined that the National Vehicle Mercury Switch Removal Program (NVMSRP) met the requirements of an EPA-approved program. However, we received two comments questioning how the effectiveness of an EPA-approved program would be ensured and suggestions for improving aspects of the rule related to program transparency, enforcement, and implementation. We have incorporated several of these suggested improvements into the final rule. The improvements include developing and maintaining a plan showing how the facility is participating in the approved program, documentation of communication to suppliers of the need to remove mercury switches and corroboration to ensure suppliers are implementing switch removal procedures.

The NVMSRP resulted from a 2-year process of collaboration and negotiation among a diverse group of stakeholders to create a dedicated nationwide effort to remove mercury-containing switches from end-of-life vehicles. The stakeholders included EPA, automakers, steel manufacturers, environmental groups, automobile scrap recyclers, and State agency representatives. These stakeholders signed a Memorandum of Understanding (MOU) detailing their respective responsibilities and commitments in the national switch recovery effort. This effort will result in substantial reductions in mercury emissions from foundries by removing the majority of mercury from metal scrap. In addition, it will have environmental benefits from reducing mercury emissions from sources other than foundries and will reduce mercury releases to media other than air. EPA recounts this history not to show that the Agency is blindly accepting this negotiated agreement, but that EPA has examined the agreement anew in light of the requirements of section 112(d) and finds that the program resulting from that agreement meets the statutory requirements. The success of the program has been documented by direct measurements of mercury in switches removed, and as of November 28, 2007, over 843,000 switches with 1,855 pounds of mercury have been recovered.

As we stated in detail at proposal, this pollution prevention approach was determined to be GACT for reducing mercury emissions from foundries. Emissions of mercury result from the melting of scrap metal that contains mercury components. When these components are removed prior to charging the scrap to a metal melting furnace, the mercury emissions are prevented. Thousands of automobile recyclers have already joined the NVMSRP, although not all members have yet sent in recycled switches. Information on the program, including scrap suppliers who have joined and the number of switches they have turned in to date, can be found on the End of Life Vehicle Solutions (ELVS) Web site *(http://www.elvsolutions.org).*

There are many elements in the NVMSRP that are designed to measure success and to evaluate its effectiveness. 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 will 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.

We note here that the Administrator is committed to evaluating the effectiveness of the approved program on a continuing basis and is a party to the agreement that established the NVMSRP. The parties (including the Administrator) recently reviewed the program's effectiveness after 1 year. The 1-year review showed reasonable progress, with recycling programs now available in every State. The national program was slightly ahead of the schedule projected for start-up. We now expect switch removals to steadily increase over the next year as these programs begin to fully operate. If the Administrator finds the program to be ineffective at the next scheduled review under the MOU, or at any time as provided in the rule, the Administrator may disapprove the program in whole or in part (e.g., for a particular State), and participation in the program would no longer be a compliance option, leaving foundry owners or operators obligated to develop site-specific programs for EPA approval in order to meet the requirements of this rule. Under the site-specific program, it would fall on the foundry owner or operator to provide a detailed accounting of switches removed and vehicles processed from all of their scrap providers to enable the Administrator or permitting authority to evaluate whether the facility is in compliance with the switch removal requirements. The somewhat lower documentation feature of the NVMSRP provides a strong incentive to all of the parties involved in switch removal to make every effort to ensure the NVMSRP is effective on a continuing basis. However, if the national program were to prove unsatisfactory and be subsequently disapproved as a compliance option, the burden would be on the foundry owner or operator to implement a site-specific approach. In either case (whether a national program or site-specific program), we have codified an approach that provides accountability and measures of 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 records of State and national totals for the number of switches and the amount of mercury removed. 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 6 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. Mercury switch removal is already underway—more than 1,855 pounds of mercury from more than 843,000 switches have been recovered to date by program participants. This represents almost 20 percent of our estimated reduction in mercury emissions of 5 tons per year once the final rule is implemented.

The commenters make valid points that the effectiveness of the rule could be improved by incorporating certain elements that the steel manufacturers have already agreed to in the MOU. We have revised the proposed rule to provide more specificity to the foundry owner or operator responsibilities and to improve the effectiveness of EPA-approved programs, which may include programs other than the NVMSRP. In addition, we are including these same requirements in the option for developing a site-specific plan for switch removal. The rule changes include:

- Foundry owners or operators must develop and maintain onsite a plan demonstrating the manner through which their facility is participating in the EPA-approved program. The plan must include facility-specific implementation elements, corporate-wide policies, and/or efforts coordinated by a trade association as appropriate for each facility.
- Foundry owners or operators must provide in the plan documentation of direction to appropriate staff to communicate to suppliers throughout the scrap supply chain the need to promote the removal of mercury switches from end-of-life vehicles. Upon the request of the permitting authority, the owner or operator must provide examples of materials that are used for outreach to suppliers, such as letters, contract language, policies for purchasing agents, and scrap inspection protocols.
- Foundry owners or operators must conduct periodic inspections or provide other means of corroboration to ensure that suppliers are aware of the need for and are implementing appropriate steps to minimize the presence of mercury in scrap from end-of-life vehicles.

In regard to the commenter's question regarding estimates of the recovery rate, the 80 percent minimum recovery rate is a goal that all parties to the MOU agreed to work toward. We recognize that 80 percent recovery will not be achieved in the first year or two; however, the parties to the MOU agreed to aim for collection of at least four million switches in the first 3 years of the NVMSRP and agreed to exceed this amount if possible. We believe that recovery of four million switches (approximately 4.4 tons of mercury at 1 gram per switch) in the first 3 years is a good beginning for working toward recovery of 80 percent of mercury switches. It is necessary to acknowledge that there will be an initial delay in many States that have recently joined the NVMSRP while individual dismantlers accumulate sufficient switches to make a shipment for recovery. It has been estimated that it may take from 6 to 12 months to fill a switch collection bucket (e.g., according to the ELVS website at *www.elvsolutions.org,* switches are typically collected in 3.5 gallon buckets that can hold up to 450 pellets).

Furthermore, the goal of removing 80 percent of the mercury switches is not the only criteria used to evaluate the success of a program. The Administrator can evaluate the success of an EPA-approved 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 the 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 can assess the information with respect to the program's goal for percent switch recovery and trends in recovery rates. For example, as the NVMSRP has ramped up, switch recovery rates have increased from 241,000 switches in 2006 to 602,000 through the first 10 months of 2007.

Comment: One commenter stated that unlike the corresponding section of the EAF rule, § 63.10885(b)(2) of the proposed foundries rule does not indicate or confirm that the NVMSRP is a program pre-approved by the EPA Administrator. The commenter states that this omission is counter to EPA's intentions as stated in section V.8.A of the MOU and does not provide a quick pathway for scrap providers to participate in a mercury switch removal program. The commenter stated that the final rule should provide pre-approval of the NVMSRP and pre-approval of existing State programs based on section VII.2.A.1.c of the MOU (which refers to existing State programs in its articulation of the NVMSRP's goal). The commenter argued that pre-approval of the eight existing State programs (which account for about 1,900 participants) would eliminate the need for scrap providers participating in those programs to obtain EPA's approval of their site-specific plans under § 63.10885(b)(1).

Response: We have revised the area source rule for iron and steel foundries to be consistent with the rule for EAF steelmaking by adding language confirming that the NVMSRP is a program pre-approved by the EPA Administrator. We are also identifying the mercury switch recovery program mandated by State law in Maine as an EPA-approved program because they submitted documentation that the requirements are equivalent to (or more stringent than) the approved national program. No other States made such requests or submitted information showing equivalency; consequently, we are not currently identifying other State programs as EPA-approved in the final rule.

Comment: One commenter pointed to the provision in § 63.10885(b)(2)(iii) which allows the Administrator to revoke approval for all or part of the NVMSRP based on review of the reported data. The commenter asked if the 90-day period between the revocation notice and the effective date of the revocation provides sufficient time for the Administrator to approve 100 site-specific plans under § 63.10885(b)(1) and if there was a process in place for seeking reconsideration of the revocation.

Response: The final rule requires the Administrator or delegated agency to review and approve the site-specific plan. This is what the proposed rule allowed because this authority was not among those listed in the rule as not being delegated. We believe the 90-day period is adequate for the approval process. The rule has no formal process for seeking reconsideration of revocation.

Comment: One commenter stated that the requirement in § 63.10885(b)(2)(iii) for the program sponsor to submit reports at least yearly should be consistent with the corresponding requirement in the proposed EAF rule. The commenter noted that the proposed foundries rule required that the report contain, among other data, the number of vehicles processed while the proposed EAF rule requires ''the estimated number of vehicles processed.'' The commenter requested correction of the proposed foundries rule to read ''the estimated number of vehicles processed''.

Three commenters requested that EPA harmonize the language and content of the proposed foundries rule and the proposed EAF rule. Each of these commenters said that the proposed rule did not identify the NVMSRP as an

approved program while the EAF proposed rule does identify the NVMSRP as an approved program. Two commenters added that the MOU suggests that the foundry rule should include and refer to the NVMSRP in its mercury requirements. One commenter objected to the requirement in § 63.10885(b)(1)(iv) for a mercury switch removal goal of 80 percent because this requirement does not apply the goal to each provider as does the proposed EAF rule. The implication is that there can be different mercury switch removal standards for different scrap providers to foundries. This language has the potential to create inequalities. One commenter noted several differences between the proposed foundries rule and the proposed EAF rule including different heading, different phrasing of the same requirements, and specific differences in requirements and definitions.

Response: We agree that the pollution prevention requirements for mercury for iron and steel foundries should be consistent with those for EAF steelmaking facilities because the technology for controlling mercury emissions (i.e., mercury switch removal from end-of-life vehicles) is the same for both source categories. We are making revisions to the final rule to ensure they are consistent. Changes to the site-specific plan for mercury switches include adding references to Resource Conservation and Recovery Act (RCRA) requirements and corrective action, requiring an 80 percent goal for each scrap provider and a separate semiannual report. Changes to the option for approved mercury programs include statements that the NVMSRP and the State of Maine program for mercury switch removal are EPA-approved programs, requiring reporting of an estimate of the number of vehicles processed instead of the number of vehicles processed, adding parenthetical mention of RCRA requirements, and adding a database requirement for progress reports. We have revised § 63.10905 (Who implements and enforces this subpart?) to remove the phrase ''in addition to EPA'' and make the list of nontransferable authorities the same in both rules. We have also revised § 63.10906 (What definitions apply to this subpart?) to add definitions applicable to the mercury switch removal program.

Comment: Fifteen commenters stated that it is technically and economically unviable for small foundries to implement a site-specific plan for mercury switch removal that meets the proposed rule requirements. Also, small foundries do not have significant buying power to push suppliers to implement an EPA-approved mercury switch removal program, according to the commenters. While the commenters support the mercury switch removal efforts, they believe that the proposed rule requirements are unnecessarily onerous for foundries. One commenter stated they would support the mercury switch removal provisions once 80 percent of scrap dealers are registered in the Federal program.

Response: Only foundries that purchase shredded motor vehicle scrap from non-program participants are required to prepare a site-specific plan. Most of the smaller area source foundries do not use shredded motor vehicle scrap, so they would not be required to prepare a site-specific plan for mercury switch removal. Furthermore, as indicated previously, we are providing area source foundries 2 years to comply with the mercury switch removal program specifically because area source foundries purchase much smaller quantities of scrap compared to EAF steel mills. By providing this additional compliance time, we believe that the NVMSRP will be sufficiently mature that area source foundries will be able to purchase motor vehicle scrap from participants of the program. Therefore, very few area source foundries will need to prepare a site-specific plan for mercury switch removal as a consequence of this final rule. Based on our analysis, we do not expect any foundries to incur a significant adverse economic impact as a result of the mercury switch removal requirements in this final rule. The commenters provided no additional information on the specific requirements they claim to be ''unnecessarily onerous.'' Consequently, we made no direct revisions to the requirements for the site-specific plan, if it is selected as the compliance option.

Comment: One commenter noted that scrap supply has been very tight and the costs have doubled over the past year. Another commenter estimated that eliminating shredded auto scrap could cost the commenter's foundries approximately $4 million per year.

Response: We understand that the price of scrap has increased over the past few years; however, the past increase and any future changes in price will not be affected in any significant way by the rule requirements for mercury switch removal. We expect most facilities will comply by participating in the NVMSRP and purchasing scrap only from scrap providers who are also participants. This program is independently funded and administered by several stakeholders. Consequently, there is no reason for the commenter to eliminate shredded automobile scrap.

Comment: One commenter stated the corrective action requirements present significant obstacles to getting reasonable site-specific plans approved. The commenter also said that what constitutes an acceptable plan will vary by State and region, resulting in uneven regulatory burden and unfair competitive advantages.

Response: Corrective actions are an important component of the site-specific plan to ensure that scrap providers are removing mercury switches. Corrective actions are not unique to the area source rule in that iron and steel foundries impose specifications on scrap related to quality and safety, and facilities take corrective actions when scrap shipments do not meet these specifications. The Administrator or delegated authority is the appropriate entity for review and approval of these plans, and the rule provides a clear description of the requirements for the plans that can be used as criteria for approval or disapproval.

Comment: Sixteen commenters stated that the mercury switch removal requirements should not apply to automotive scrap, such as brake rotors and pump housings, that do not contain mercury switches. Two commenters recommended that EPA clarify the type of scrap subject to the metallic scrap requirements by describing it as ''shredded auto bodies'' or ''post-consumer automotive body scrap.'' One commenter requested specific exemptions from the mercury switch requirements for foundries that melt only pre-consumer scrap or that the rule be written to apply to only those melting recycled auto bodies. One commenter requested that the proposed rule include a fourth option that specifically excludes scrap that does not come in contact with mercury from the mercury switch removal provisions.

Response: We have added a definition of the term ''motor vehicles scrap'' to the final rule. ''Motor vehicle scrap'' means vehicle or automobile bodies, including automobile body hulks, that have been processed through a shredder. This definition does not include automobile manufacturing bundles or miscellaneous vehicle parts such as wheels, bumpers, or other components that do not contain mercury switches. We have also clarified the rule by adding provisions specific to scrap that does not contain motor vehicle scrap. The final rule requires that for each scrap provider, contract, or shipment, the foundry must procure all scrap that does not contain

motor vehicle scrap according to the requirements in § 63.10885(b)(4) of the final rule. Section 63.10885(b)(4) requires the owner or operator to certify in the notification of compliance status that the scrap used at the foundry does not contain motor vehicle scrap and to keep records to document the certification.

Comment: Four commenters stated other products that contain mercury beside automotive switches are included in the scrap metal used by foundries and should be covered by the mercury requirements. Three of the commenters said that components in household and commercial appliances, sump and bilge pumps, heating and air conditioning units, and industrial equipment (e.g., tilt switches, thermometers, flame sensors, float sensors, relays, switches, barometers, manometers, floats, and other types of sensing and control equipment) also contain mercury and should be included in a removal program. This could be done by expansion of the NVMSRP or through the establishment and funding by mercury product manufacturers and the steelmaking sector and/or collection programs targeting other products that contain mercury.

One commenter stated that the proposed rule should be expanded to require the removal of all automotive switches, not just 80 percent of convenience light switches. Another commenter stated that the rule should expand the scope of the switch program to include any original equipment or aftermarket mercury tilt switch installed in a vehicle and used in convenience lighting, anti-lock braking systems (ABS) sensors, security systems, active ride control, or other applications.

Response: During the development of the proposed EAF rule, the EPA considered the removal of other mercury-containing components in automobiles, such as switches in ABS, and determined the option was not justified as a beyond-the floor standard (72 FR 53824). Similarly, we conclude that removal of these sources of mercury does not represent GACT for iron and steel foundries. These sensors are considerably more difficult and time consuming to remove than are convenience light switches, and they contribute much less mercury (e.g., 87 percent of the mercury in end-of-life vehicles comes from convenience light switches). The commenters provided no data or rationale to support that the removal of other sources of mercury from the scrap supply was economically and technologically feasible for foundries or that their removal should represent GACT.

Most mercury-containing components in appliances were phased out several years ago, and any that might remain would contribute very little mercury to the scrap supply compared to switches in automobiles. While some ABS contained mercury sensors, these too have been phased out and were much less common than mercury convenience light switches.

Comment: One commenter stated that the NVMSRP is a voluntary program in his State and not all suppliers participate. The final rule should require effective participation by suppliers or compliance with the national program.

Two commenters stated that the requirements of the mercury switch removal program must be incorporated in air permits, and the provisions must be clearly understood and enforceable by air agencies and their counterparts in other media programs. If these provisions are not explicit in the program, the pollution prevention approach will not be effective.

Two commenters claimed that EPA has not taken the NVMSRP into account when developing these regulations in the development of this rule as required by the MOU. The commenters stated that the MOU was written as a nonbinding contract for EPA and several industries for the voluntary removal and disposal of mercury switches while the requirements in the rule are mandatory.

Response: Although participation in the NVMSRP is voluntary, the pollution prevention standard for mercury establishes clear mandatory requirements for the removal of mercury switches to reduce mercury emissions from iron and steel foundries. Participation in the NVMSRP is only one option for compliance, and although we expect it to be the preferred compliance approach, each of the compliance approaches have common requirements to ensure switch removal and to provide an accounting of the number of switches removed and number of vehicles processed. The number of scrap providers participating in the NVMSRP has increased steadily since its inception, and as the area source rules for iron and steel foundries and EAF steelmaking are implemented, there will be additional incentives for many more scrap providers to participate to maintain their customer base.

The rule requirements are explicit and should be clearly understood and enforceable by air agencies. Although the final rule exempts facilities that do not have a title V permit from the requirement to obtain a permit for the purposes of this rule, sources that already have a title V permit generally must include the requirements of this rule through a permit reopening or at renewal according to the requirements of 40 CFR part 70 and the title V permit program.

Comment: One commenter stated that EPA must address ways to encourage or require mercury removal from scrap destined for export.

Response: This area source rule addresses mercury in scrap destined for iron and steel foundries, and removal of mercury from scrap destined for export in not within the scope of the rule. However, we expect that the NVMSRP and State programs for mercury switch removal will result in the reduction in mercury in scrap for all users, including scrap that is exported.

Comment: One commenter recommended that a sunset clause be added to the mercury switch removal requirements as mercury switches have been phased out of new automobiles.

Response: Our information indicates that there is a 10-year supply of end-of-life vehicles that may contain mercury switches. Consequently, we do not think it is appropriate to add a sunset provision. However, review of the mercury requirements will be appropriate when the 8-year review of the standard is conducted.

Comment: One commenter stated that the requirement to inspect the scrap poses a safety risk to the personnel inspecting the scrap.

Response: Our information indicates that many facilities already inspect incoming scrap and have established procedures for doing so safely.

Comment: One commenter stated that it is inappropriate to direct that every recycling facility should be removing the same amount of switches because there is no mechanism that can accurately gauge if facilities are removing the maximum number of switches. The commenter explained that a facility can be removing only 10 switches per month and be maximizing their removal while another facility can be removing 1,000 switches per month and only removing a portion of available switches based on the age and origin of the vehicles handled by the facility. Attempting to determine the recovery rate necessitates having both the number of switches recovered and the total number of vehicles processed but the number of vehicles processed is confidential business information (CBI). The commenter stated that the rate could vary from facility to facility and not be indicative of the facilities level of participation in an approved program.

Another commenter said that the requirements in § 63.10885(b)(1)(ii)(C), (b)(1)(iii), and (b)(1)(v) may require scrap providers to divulge CBI or to provide sensitive information to foundry operators to comply.

Response: The NVMSRP does not require that facilities remove the same number of switches. There are two key statistics in determining the recovery rate of mercury switches: the number of switches removed and the number of vehicles processed. This information is essential in determining the progress towards meeting the recovery goal of 80 percent. The percent of switches recovered (the capture rate as defined in the MOU) is the number of mercury switches removed from end-of-life vehicles divided by the total mercury switch population in end-of-life vehicles in a given time period (e.g., each year of the program) times 100. Furthermore, the 80 percent goal recognizes that the total mercury switch population is dependent on the age of the vehicles processed. This approach accounts for the differences in the capacity or processing rate of different facilities, which is the subject of the comment.

It is in the interest of both the scrap provider and foundry operator to provide the information required by the rule and to establish procedures if necessary to protect confidential information. The requirements in the final rule include: (1) Periodic inspections or other means of corroboration to ensure that scrap providers and dismantlers are implementing appropriate steps to remove mercury switches; (2) estimates of the number of switches removed; and (3) semiannual progress reports that provide the number of switches or weight of mercury removed, number of vehicles processed, estimate of the percent of switches removed, and certification of proper disposal of the switches. This information is an essential monitoring component of the rule to measure the effectiveness of a facility's pollution prevention program. The information on number of vehicles processed can be aggregated for a facility if it is important not to reveal the number of vehicles processed by a given scrap provider. We do not see nor did the commenter identify exactly what component of the requested information would be CBI; however, if the case can be made that the information is not emissions data and there is CBI involved, EPA and the permitting authorities have established procedures for managing and safeguarding CBI and will, of course, utilize them.

Comment: One commenter stated that in § 63.10885(b)(1)(i) and (ii), the requirement for removal of mercury switches from vehicle bodies used to make scrap does not seem to recognize the possibility of inaccessible switches. The commenter suggests replacing ''mercury switches'' with ''accessible mercury switches.''

Response: We have defined mercury switch to include only those switches that are part of a convenience light switch mechanism. Our information indicates that these switches are accessible and are easily removed, and it is important to the success of the pollution prevention program that they be removed. Consequently, we are not adding the additional requirement that they be ''accessible,'' which would introduce additional uncertainty because of the judgment that must be made as to what is accessible.

Comment: One commenter stated the requirement in § 63.10885(b)(1)(B) for assurances from scrap providers that scrap meets specifications does not seem to allow for uncertainty or error. The commenter suggested that the language read ''Provisions for obtaining assurance from scrap providers that to the best of their knowledge, motor vehicle scrap provided to the facility meets the scrap specification''.

Response: We disagree that the change recommended by the commenter is necessary because the phrase ''to the best of their knowledge'' is subjective and provides no improvement. The foundry owner or operator must obtain assurance to their satisfaction that the scrap meets specifications.

Comment: One commenter said the requirement in § 63.10885(b)(1)(ii)(C) for a 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 should be replaced with appropriate steps ''to encourage the removal of accessible mercury switches from motor vehicles to be shredded''.

Response: We disagree because corroboration to ensure that scrap providers and dismantlers are implementing appropriate steps to minimize the presence of mercury switches in motor vehicle scrap is necessary to ensure the effectiveness and credibility of the pollution prevention requirements.

Comment: One commenter asked what is meant by taking corrective action in § 63.10885(b)(1)(ii)(D) since the nonconforming actions are committed by different parties? Does a scrap provider have any recourse when corrective actions are deemed necessary by a foundry?

One commenter stated that any corrective action plan elements approved by the Administrator should reference MOU sections V.3.H and V.7.C, which defines good faith participation as ''the actual removal of switches or the implementation of source control programs to assure removal of switches prior to receipt''.

Response: The procedures for taking corrective actions must be described by the owner or operator in the site-specific plan, and these procedures may vary depending on the type of scrap, scrap provider, and other factors, some of which may be unique to the facility. The concept is not a new one because foundry owners or operators have historically taken corrective actions when scrap does not meet their specifications. The area source rule places no direct requirements on the scrap provider; however, we expect that the scrap provider would work with customers (the iron and steel foundry owners or operators) to resolve any questions of recourse with respect to corrective actions.

Comment: One commenter objected to the requirement in § 63.10885(b)(1)(iii), which effectively compels scrap providers to collect switch removal information from all upstream sources of end-of-life vehicles. The commenter stated that to impose such burdensome requirements on the suppliers of the regulated entity far exceeds the Agency's regulatory authority, poses CBI concerns, and imposes excessive paperwork and recordkeeping requirements on the scrap provider. These comments also apply to § 63.10885(b)(1)(v) because the requirements are likely to compel scrap providers to provide information to foundry operators to comply. Another commenter stated that it is unreasonable to burden foundries to ensure scrap providers and dismantlers are implementing appropriate steps to remove and dispose of mercury switches. The commenter also noted that foundries would not be able to obtain information on the number of mercury switches or weight of mercury removed because most foundries use scrap brokers and are a step or two removed from the dismantlers. Another commenter stated that it is inappropriate for EPA to regulate end-users and that EPA should directly regulate the scrap sellers and processors with respect to mercury switch removal.

Response: The burden imposed by the Agency is on the foundry owner or operator to obtain switch removal information because it is a critical

monitoring component of the rule. The owner or operator in turn must require this information from scrap providers, and if such information is not obtained, the owner or operator could be found in violation of the rule. It is in the interest of the scrap provider, the owner or operator, the public health, and the environment that such information be obtained to ensure that mercury releases to the environment are reduced by the removal of mercury switches.

Comment: One commenter objected to the credit allowed in § 63.0085(b)(1)(iv) for calculating the 80 percent mercury switch removal goal for site-specific plans. The commenter objected to the credit because it allows counting of mercury removed from components other than convenience lighting while the approved plan requires only the removal of mercury switches from convenience lighting. The commenter stated that the provision is not consistent with the MOU, which states that only mercury switches used for convenience lighting will be counted for purposes of measuring program performance. The commenter argued that site-specific plans should not be held to a higher standard than the NVMSRP.

Response: While it is true that only switches from convenience lighting apply to the 80 percent minimum goal of the NVMSRP, ELVS accepts switches from anti-lock brake systems and the automobile or scrap recyclers that remove them are paid the incentive fee of $1.00 per switch. We believe that this provides an incentive to remove switches from anti-lock brake systems as well as for convenience lighting. In the requirements for site-specific plans, other sources of mercury are included in determining the 80 percent goal, such as in anti-lock brake systems, security systems, active ride control, and other applications. Inclusion of these other components in the site-specific programs provides an incentive for their removal. These mercury-containing components contribute less mercury (13 percent compared to 87 percent from convenience light switches), and they are more difficult to locate, identify, and remove. Mercury-containing components in anti-lock brake systems will be the components other than convenience light switches that are most often removed. The removal of these components requires removing the rear seat and dismantling the anti-lock brake system. We believe that if a dismantler chooses to take the time to remove and recover mercury components from anti-lock brake systems or other components, they should receive some type of credit for doing so, thus they can include them in their 80 percent minimum recovery goal.

C. Requirements for Large Iron and Steel Foundries

1. Subcategorization of Metal Melting Furnaces

Comment: Five commenters stated that EPA should also consider a 5 ton per hour (tph) melting capacity threshold for each EIF as the most appropriate way to minimize impacts on small area source foundries if the per furnace basis is used. Another commenter recommended a size threshold 5 tph for EIF if the per furnace basis was used. In addition, two commenters opposed the proposed rule and asked EPA to reconsider the applicability to melting processes or allowable emissions. As discussed in section IV.F of this preamble, several commenters stated that control of metal melting furnaces and/or EIF was not cost-effective.

Response: We considered EIF-specific thresholds, but concluded that these were not appropriate for several reasons. First, as described previously, we increased the size threshold for large area source foundries to 20,000 tpy. The increased size threshold more effectively reduced burden to the smaller foundries than an EIF-specific cut-off. Second, we could not identify a strong rationale as to why smaller induction furnaces at foundries with production greater than 20,000 tpy should be subcategorized. A significant portion of EIFs at foundries greater than 20,000 tpy metal melting capacity were controlled, regardless of the EIF size. Finally, emissions from EIF furnaces are much better correlated with the total melt production than the size of the furnace. Smaller furnaces can have higher emissions than larger furnaces if they process more metal. Therefore, we determined that an EIF-specific threshold was not appropriate and is not included in this final rule.

2. Emission Standards

Comment: One commenter stated that because area source standards will not be subject to residual risk standards, it is important to regulate emissions of particulate matter (PM) and HAP as well as possible under this rule.

Response: We agree. As discussed in the proposal preamble, we evaluated more stringent emission limits, but found that these were not cost-effective for existing sources. Although we increased the size threshold in this final rule, we rejected higher thresholds or additional EIF-specific thresholds specifically to regulate emissions of PM and HAP as well as possible, while considering the costs of these regulations.

Comment: One commenter noted that in the proposal preamble EPA refers to the emission limit as pounds per ton of metal melted, but the regulatory language in § 63.10895(b)(1) refers to ''per ton of metal charged.'' The commenter requested clarification as to EPA's intent, and recommended the use of ''per ton metal charged'' as the charge into the furnace is more amenable to measurement.

Response: We agree with the commenter. We intended to require foundries to measure and record the tons of metal charged to the furnace as indicated in the proposed regulatory language. Although we commonly refer to this as tons of metal melted, we acknowledge that there is a subtle difference and we have tried to consistently refer to ''tons metal charged'' as the basis of the standards in this final rule and preamble.

Comment: One commenter stated that the PM emissions limit (0.8 pound of PM per ton of metal charged) is too low because some existing wet scrubbers cannot achieve this emission limit and because the alternatives to improve the emission performance of these systems would be very costly.

Response: The available data clearly indicate that the 0.8 lb/ton emission limit is easily achievable with a well performing wet scrubber or baghouse control system. The available data also indicated that a small percentage of cupola wet scrubbers would need to be upgraded in order to meet this emission limit. We have considered the costs of these upgrades and determined that these upgrades are reasonable for the large area source foundries. GACT need not be an emission limit that all wet scrubbers can meet, regardless of their design or performance. We selected the 0.8 lb/ton PM limit as GACT because this level of performance represented the typical performance of the generally available control technologies used to reduce PM and metal HAP emissions from foundry melting furnaces at reasonable cost.

Comment: One commenter noted that § 63.10895(a) requires ''each'' melting furnace to operate a capture system, but § 63.10898(e)(3) provides default emission factors for uncontrolled EIF not equipped with a capture system for use in emissions averaging calculation. The commenter requested clarification that capture and collection systems are not required for ''each'' melting furnace.

Response: We agree. We have revised the language in § 63.10895(a) of the proposed rule and § 63.10895(b) of the

final rule to indicate that ''You must operate a capture and collection system for each metal melting furnace at a new or existing iron and steel foundry unless that furnace is specifically uncontrolled as part of an emissions averaging group.''

Comment: One commenter requested elaboration on EPA's intent when referencing ''accepted engineering standards published by ACGIH'' for capture systems.

Response: Accepted engineering standards such as design procedures for local exhaust hoods and exhaust systems are included in each annual edition of *Industrial Ventilation: A Manual of Recommended Practice* published by the American Conference of Governmental Industrial Hygienists (ACGIH). The purpose of the rule requirement is to require foundries to install and operate capture systems using appropriate design factors for the hood and furnace emissions so that the capture systems will operate properly.

Comment: One commenter said that he assumed the PM emissions limit applies only to melting (SCC 30400303), but it would be impossible to segregate these emissions from charge handling and inoculation (SCC 30400315 and 30400310), and stated that this issue requires further evaluation.

Response: In general, all activities that are performed in the metal melting furnaces are subject to the emission limits. These include, but are not limited to: Charging, melting, alloying, refining, slagging, and tapping. We have provided more detail regarding the operating conditions for the performance tests to clarify this issue. Generally, inoculation is performed in the transfer ladle and transfer ladle operations are subject only to the building opacity limit. However, if inoculation occurs in the melting furnace, then inoculation emissions are subject to the overall furnace emission limit.

Comment: Two commenters argued that the proposed opacity limit is more restrictive than the major source rule since it does not include an allowance for one 6-minute period per hour of up to 30 percent opacity. The commenters stated that the area source rule should not be more stringent than the major source foundry rule, which was based on MACT, and recommended that EPA include, at a minimum, an allowance for one 6-minute period per hour of up to 30 percent opacity. Another commenter stated that the opacity limit should not be based on MACT, but on GACT, which the commenter believes would be 30 percent or 40 percent average opacity.

Response: We agree that the proposed opacity limit should not be more stringent than the corresponding MACT standard. We reviewed the State and local agency opacity requirements for selected States with significant foundry populations. There are several States that require 20 percent opacity, but nearly all of these State programs provide an allowance for one 6-minute period per hour; allowances provided in different State regulations include: 27, 30, 40 and 60 percent opacity limits. Although we do not agree with the second commenter that a limit of 30 to 40 percent opacity limit would represent GACT, we do agree that one 6-minute period per hour of up to 30 percent opacity reflects GACT for area source foundries. In response to the commenters' concerns, we have revised the proposed opacity limit to include the allowance for one 6-minute period per hour of up to 30 percent opacity.

3. Monitoring

Comment: Eighteen commenters said that EPA should allow visible emissions (VE) observations to document compliance with the fugitive emissions limit in order to reduce burden on small foundries. One of the commenters stated that EPA underestimated the burden associated with Method 9 observations. The commenters recommended that if visible emissions were observed, a Method 9 test could be conducted to demonstrate compliance with the opacity limit. Another commenter stated that EPA should require VE observations on a weekly basis (noncertified individual would be acceptable under certain conditions) in addition to the semiannual Method 9 readings because weekly observations would be more effective for compliance than a certified reading occurring twice a year.

Response: We agree with the commenters that allowing VE observations by Method 22 (40 CFR part 60, appendix A–7), with a subsequent test by Method 9 (40 CFR part 60, appendix A–4) is a reasonable alternative for determining compliance with the opacity limit for fugitive emissions from foundry operations and may reduce compliance costs. In response, we have revised Table 1 of the final rule to include such an alternative. The alternative allows foundries to conduct the semiannual performance tests using Method 22 instead of Method 9. The results of the Method 22 test demonstrate compliance with the opacity limit if no visible emissions occur for at least 90 percent of the 1-hour observation period. If visible fugitive emissions from foundry operations occur for more than 10 percent of the Method 22 observation period (i.e., more than a cumulative 6 minutes of the 1-hour period), the owner or operator must conduct a Method 9 test as soon as possible, but no later than 15 days after the Method 22 test to demonstrate compliance with the opacity limit.

Comment: One commenter stated that the requirement to install and maintain a continuous parameter monitoring system (CPMS) is potentially costly and unnecessary. The commenter suggested that visual checks and manual recording of the operating parameter values once per shift as used in existing title V permits be allowed instead of a CPMS.

Response: This commenter objected to CPMS as too costly and unnecessary. As discussed below, other commenters objected to the proposed operating parameters for baghouses, wet scrubbers, and electrostatic precipitators (ESPs) that would be monitored. In response to these comments, we have revised the proposed monitoring provisions for PM control devices. For PM control devices at existing affected sources, the final rule requires the owner or operator to conduct initial and periodic inspections of each PM control device. These inspection requirements are included in many title V permits for PM control devices. We have deleted the proposed inspection and monitoring requirements for fabric filters that required pressure drop monitoring of baghouses. Bag leak detection systems are required for fabric filters used at new affected sources. The owner or operator of an existing affected source may choose to comply with the requirements for bag leak detection systems or the new inspection requirements.

We have also revised the proposed monitoring requirements for wet scrubbers and ESP to apply to new affected sources instead of existing affected sources. The final rule requires CPMS to measure the 3-hour pressure drop and water flow rate for each wet scrubber. For ESP, the owner or operator must maintain the voltage and secondary current (or total power output) to the control device at or above the level established during the initial or subsequent performance test. Table 2 of the final rule requires the operating limit for a wet scrubber to be based on the average pressure drop and average scrubber water flow rate measured during the performance test; for an ESP, the operating limit is to be based on the minimum hourly average measurements.

Comment: Four commenters objected to basing the baghouse pressure drop

operating limit on the pressure drop range observed during the performance test. The commenters stated that baghouses can operate effectively over a range of pressure drops and a single test is too short to encounter the full range of pressure drops that are normally encountered. The commenters recommended using manufacturer's recommended operating ranges or historical performance for the baghouse pressure drop operating limits. One commenter suggested volumetric flow rate or static pressure upstream of the baghouse may be more appropriate operating parameters to monitor. Four commenters objected to the baghouse pressure drop operating limit being determined across each baghouse cell. The commenters recommended using the pressure drop across the entire baghouse. One commenter said that baghouse pressure drop varies with overall building ventilation and balancing air flow in the foundry is a balancing act, and varies with the outdoor temperature. The commenter stated that it is impossible to capture these scenarios during a performance test.

Response: We agree with the commenters that pressure drop is not a good indicator of baghouse performance. The requirement for pressure drop monitoring originated from baghouse maintenance requirements included in title V permits. As discussed above, we have replaced these provisions in the proposed rule with other inspection and maintenance requirements.

Comment: Three commenters objected to basing the wet scrubber pressure drop operating limit on the pressure drop range observed during the performance test for the same reasons as their comments on baghouse pressure drop operating limits. The commenters argued that like baghouses, scrubbers can operate effectively over a range of pressure drops and a single test is too short to encounter the full range of pressure drops that are normally encountered. The commenters recommended using manufacturer's recommendations or operation history for setting the operating limits. One commenter extended these comments to electrostatic precipitators (ESPs).

Response: We disagree with the commenters. In performance tests conducted on a cupola wet scrubber, we noted a strong (inverse) correlation between the wet scrubber pressure drop and the PM emissions from the control system. Relatively small changes in the pressure drop altered the emissions by a factor of two. A foundry may always re-test the control system at new (lower) operating limits if the operating limits determined during the initial test are too restrictive, but the foundry must demonstrate that they can meet the emissions limit at that lower operating limit. That said, we recognize that many existing foundries are not equipped with CPMS. Therefore, we have revised the monitoring requirements for existing sources, but we retain the requirements for CPMS for new sources.

Comment: One commenter stated that new sources should not be required to install bag leak detection systems, but should be allowed to monitor their baghouses similar to existing sources. The commenter requested further explanation on EPA's position on this issue.

Response: New sources should be able to employ improved monitoring technology. Wherever possible, we request that new sources use automated systems that will measure and record operating parameters (or emissions). Over time, we expect that this approach will improve monitoring technology and reduce costs for existing and new sources.

4. Operation and Maintenance Requirements

Comment: Two commenters stated that EPA should eliminate the requirement to have a written operation and maintenance (O&M) plan because writing the plan is an unnecessary burden (in the range of $2,000 to $2,500 for a small facility, according to the commenters) with little environmental benefit. According to the commenters, monitoring and recording operating parameters are sufficient to demonstrate compliance and this can be done without a written plan.

Response: We have reduced the burden associated with preparation of the O&M plan by revising the monitoring requirements. Several portions of the O&M plan requirements are related to the operation and maintenance of bag leak detection systems and CPMS. The final rule requires these monitoring systems only for new sources. We continue to believe that an O&M plan provides EPA and foundry representatives with a single source of information on monitoring and maintenance responsibilities. In the development of the proposed requirements for the O&M plan, we included many of the industry comments and recommendations for requirements that were reasonable for area source facilities.

Comment: One commenter requested that EPA expand the O&M plan to include actions to be taken in the event of an opacity exceedance. If after a specified time with no opacity exceedances, the facility could be allowed to make weekly observations with a non-certified individual instead of Method 9 readings twice a year.

Response: If the foundry exceeds the opacity limit, then that foundry is out of compliance with the emissions limit and could be subject to enforcement actions. Although we considered more frequent visible emission observations, the visible emission observations could not be tied to the opacity limit. Therefore, if visible emissions were observed, an opacity observation would be needed to verify that the visible emissions did not exceed the opacity limit. This would greatly increase the burden associated with the opacity requirements, which many commenters suggested were already too burdensome. A foundry may use weekly visible emission observations as means to ensure compliance with the opacity limit if they choose, and the foundry may include such observations and corrective actions to be taken within their O&M plan if they choose.

Comment: Three commenters stated that the daily check of the compressed air supply for a pulse-jet baghouse was not necessary. The commenters argued that static pressure exceeding allowable ranges would be a better indicator of a problem and the need for corrective action measures. Three commenters stated that the monthly visual bag inspections are not necessary, and suggested that semi-annual inspections would be sufficient. Similarly, the commenters recommended that the quarterly inspection of baghouse physical integrity and fans is unnecessary and that semi-annual inspections would be sufficient.

Response: The commenters' concerns have been addressed because we have removed the baghouse inspection and maintenance requirements from the proposed rule. These requirements have been replaced with more general inspection and maintenance requirements for PM control devices (baghouses, scrubbers, and electrostatic precipitators).

Comment: One commenter requested guidance on what an acceptable alarm set point is when using a continuous bag leak detection system.

Response: The alarm set point will vary according to the design of the equipment. For additional information on bag leak detection systems that operate on the triboelectric effect, we encourage the commenter to review ''Fabric Filter Bag Leak Detection Guidance'', Environmental Protection Agency, Office of Air Quality Planning and Standards, September 1997, EPA–

454/R–98–015, National Technical Information Service (NTIS) publication PM98164676. This document is available from the NTIS, 5385 Port Royal Road, Springfield, VA 22161. This document also may be available on the TTN at *http://www.epa.gov/ttn/emc/cem.html*.

Comment: One commenter stated that, while 30 days may be sufficient time to implement minor repairs (i.e., time between inspections), some repairs may require more time (e.g., to solicit contract bids, perform engineering analysis, and install equipment). The commenter requested that the rule allow additional time for foundries to complete necessary repairs.

Response: In response to the commenter's concern, we have added additional time to implement repairs to capture systems. The final rule requires that repairs be completed as soon as practicable, but no later than 90 days.

Comment: One commenter stated that capture system requirements should be included in the O&M plan because PM build-up in capture systems, particularly for batch processes such as EIFs, could significantly reduce capture efficiency. The commenter recommended that EPA include capture system in the inspections required for control systems. Specifically, § 63.10985(a) be revised to require ''* * * Each capture and collection system must meet and maintain * * * ''; § 63.10896(a) be revised to require an O&M plan '' * * * for each capture and control device * * * ''; add a paragraph § 63.10896(a)(6) to require ''Information on the inspection of the capture system components, including, but not limited to, emission intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans, to assure there is not material build-up impeding flow to the control device.''; and revising § 63.10897(c)(8) to ''Inspect emission intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans for wear.''

Response: We appreciate the commenter's suggestions. While capture systems have been included in the O&M plans for major source rules, we have not included requirements for capture systems in the area source rule as one way of reducing compliance costs for area source foundries. In addition, the suggested revisions to § 63.10897(c)(8) are not needed as inspection requirements for the capture system are already specified in § 63.10897(e).

5. Testing Requirements

Comment: One commenter requested clarification on how 1-hour performance tests are to be conducted on EIFs that operate in a batch mode for 25 minutes. Additionally, the commenter inquired if there were operating condition requirements, such as operating within 10 percent of the stated melt capacity, for the performance test or if the operating conditions were not relevant because the emission limit is normalized by the melt rate. Another commenter requested guidance on methods for measuring emissions per ton charges for line frequency furnace shops, and noted concern on how a 1-hour emission test would provide a representative estimate of the emissions from a series of EIFs all cycling differently.

Response: In this final rule, we have clarified that ''For electric arc and electric induction metal melting furnaces, sample only during normal production conditions, which may include, but are not limited to the following cycles: charging, melting, alloying, refining, slagging, and tapping.'' For the 25-minute batch time cited by the first commenter, approximately two batches would be completed during the 1-hour run. If multiple EIFs are all cycling differently, the 1-hour run would capture different cycles for the different furnaces. In the course of three 1-hour runs, data for several complete cycles will be collected. We do not specify operation within 10 percent of the stated melt capacity of the furnace because, as noted by the commenter, emission limits are normalized by the tons of metal charged. However, the melting rates are required to be indicative of normal production conditions.

Comment: One commenter said that when there are many furnaces and other unregulated sources exhausting to a baghouse, the performance test will be problematic because it will be difficult to identify suitable test ports that are not influenced by other disturbances. The cost of duct rework, according to the commenter, is approximately $100,000.

Response: First, we have included provisions for determining compliance with the emissions limit in situations where regulated and non-regulated emission streams are mixed. We recognize that these provisions may not be suitable for all duct conditions. However, one can always demonstrate compliance with the emission limit on the combined stream. Using a baghouse control system, it is likely that the baghouse exhaust can be used to demonstrate compliance with the PM limit, even when other PM sources (such as sand handling) are included. Moreover, we have also provided an alternative metal HAP emission limit. As emission limits were not set for other PM emission sources at the foundry precisely because these PM sources do not contain appreciable metal HAP, we expect that the baghouse exhaust can be used to demonstrate compliance with the metal HAP emission limit, regardless of what other unregulated streams may also be controlled by the furnaces' baghouse.

Comment: One commenter recommended that EPA eliminate the requirement to re-test every 5 years for PM emissions provided that initial results were less than 75 percent of the emission limit and no process changes are made.

Response: We considered this alternative, but concluded that elimination of the subsequent tests (every 5 years) was not appropriate. First, we have reduced the monitoring burden for the control systems in this final rule compared to the proposed rule. Therefore, the subsequent tests are necessary to assure ongoing compliance with the emission limits. Second, the subsequent tests do not pose an unreasonable compliance cost to large (greater than 20,000 tpy) area source foundries.

Comment: One commenter stated that, in order to perform an emissions test on the EIFs at his facility, the plant would have to install a capture and blower system that costs almost $1 million just to determine whether or not they are already in compliance.

Response: We recognize that testing uncontrolled EIFs is difficult. For this reason, we have added to the final rule special provisions for testing EIFs. For EIFs equipped with emission control devices, this final rule allows existing foundries to use the performance test results for one EIF to demonstrate compliance for other EIFs provided the other furnaces are similar with respect to the type of emission control device used, composition of the scrap charged, furnace size, and melting temperature. For uncontrolled EIFs, the final rule allows the use of test results from another furnace to demonstrate compliance if the test results are prior to any control device, and the furnaces are similar with respect to the composition of scrap charged, furnace size, and melting temperature. In addition, for EIFs without emission capture systems, we have clarified in the final rule that existing foundries may install a temporary enclosure for the purpose of sampling emissions. A permanent enclosure and capture system is not required for the purpose of testing.

Comment: One commenter noted that the preamble stated that performance tests are required within 180 days of

promulgation, and stated that this was inadequate time to install controls and demonstrate compliance since it takes 180 days to get a construction permit.

Response: We have revised the preamble to the final rule to state that the owner or operator must conduct the performance test within 180 days of the compliance date, not the effective date.

D. Implementation and Enforcement

Comment: Seven commenters supported EPA's proposal to exempt area source foundries from title V permit requirements because requiring title V permits would add significantly to the compliance costs with little to no additional environmental benefit. Two commenters stated that the requirements of the mercury switch removal program must be incorporated in air permits and the provisions must be clearly understood and enforceable by air agencies and their counterparts in other media programs. If these provisions are not explicit in the program, the pollution prevention approach will not be effective.

Response: We did not receive any adverse comments on our decision to exempt this area source category from title V permitting requirements. As discussed in the preamble to the proposed rule (72 FR 52997, September 17, 2007) we found that the cost of title V permitting would be burdensome and the cost would not be justified because there would be little to no potential gains in compliance if title V permits were required. We also concluded that title V permitting was unnecessary to assure compliance with the NESHAP because the statutory requirements for implementation and enforcement of the NESHAP by EPA and the delegated States are sufficient to assure compliance without title V permits. In addition, we have added provisions to the final rule to improve the enforceability and effectiveness of the mercury switch removal program. The commenters did not provide any new information to change these conclusions. Therefore, we are not revising the final rule to require title V permits for the mercury switch removal requirements. Although the final rule exempts facilities that do not have a title V permit from the requirement to obtain a permit for the purposes of this rule, sources that already have a title V permit generally must include the requirements of this rule through a permit reopening or at renewal according to the requirements of 40 CFR part 70 and the title V permit program.

Comment: One commenter questioned the addition of the phrase ''in addition to EPA'' to the provisions for implementation and enforcement in § 63.10905. The commenter said this language (which is not in the EAF rule) suggests that two separate entities have equal implementation and enforcement authorities except for nontransferable authorities listed in § 63.10905(a). The commenter stated that this dualism would create legal issues and could create practical problems for stakeholders. The commenter requests that this phrase be removed from the final rule.

Response: We agree with the commenter and have removed this phrase from the final rule.

Comment: One commenter noted that § 63.10905(c) refers to the authorities which cannot be delegated in paragraphs (c)(1) through (4) of this section, then lists (c)(1) through (5). The commenter also asks why this rule has two extra non-transferable authorities concerning opacity that are not in the EAF rule.

Response: We have revised the proposed rule to cite paragraph (c)(5) instead of (c)(4) as the commenter noted. There are five non-transferable authorities in this final rule that cover the emissions limits, opacity limit, monitoring, test methods, and recordkeeping/reporting requirements. We have also revised the proposed rule to specifically reserve EPA's authority for review and approval of local, State, or national mercury switch removal programs. The proposed EAF rule should have cited the emissions limit and opacity limit as well as the monitoring, test methods, and recordkeeping/reporting requirements. We will revise the proposed EAF rule to show five non-transferable authorities instead of three and to reserve authority for approval of local, State, or national mercury switch removal programs.

E. Definitions

Comment: One commenter recommended that EPA include a definition of ''total metal HAP'' as provided in the amendments to the major source foundry rule currently under development.

Response: We agree with the commenter's suggestion and have revised the proposed rule accordingly.

Comment: One commenter said that the rule should define ''fugitive emissions'' as in the foundry MACT standard, but further clarify that fugitive emissions do not include emissions that stay within the building as follows: ''Fugitive emissions is a drifting emission that exits a building in a manner other than though a collected or uncollected, powered exhaust fan/vent.''

Response: We agree with the commenter that ''fugitive emissions'' should be defined and we have added a definition of ''fugitive emissions'' commensurate with the one used in the major source foundry MACT standards. We disagree that fugitive emissions excludes uncollected dust that is exhausted through general building ventilation or roof fans.

Comment: One commenter stated that the final rule should include a definition for ''scrap provider'' that is the same as the definition in the EAF rule with the recommended changes. The commenter recommended that the proposed definition of ''scrap provider'' in the EAF rule be revised because the definition includes brokers who have no oversight over scrap preparation and delivery. According to the commenter, a revised definition should allow brokers to considered ''scrap providers'' as a contractual matter. The commenter suggested that EPA define ''scrap provider'' to mean ''the final preparer of scrap delivered to a steel mill, or a broker when a brokered transaction specifies that the broker provide information to the steel mill from the scrap processors participating in the brokered transaction.''

Response: We agree that the definition of ''scrap provider'' in the EAF rule should be included in the final rule. We disagree that the proposed definition in the EAF rule should be revised because the definition as proposed allows a broker to be considered a scrap provider. The foundry owner or operator must ensure that the broker receives scrap only from suppliers participating in an EPA-approved program or for the site-specific option, that the suppliers have removed mercury switches and provide an accounting of the number of switches removed and vehicles processed, along with all of the other requirements in the site-specific plan.

Comment: One commenter recommended that the final rule include the definition of ''motor vehicle scrap'' as revised to refer to shredded scrap that contains shredded end-of-life vehicles. The commenter explained that shredded scrap typically includes shredded end-of-life or obsolete appliances as well as other materials. Alternatively, the commenter suggested replacing the definition of ''motor vehicle scrap'' with a definition of ''shredded scrap'', which would contain some fraction of shredded end-of-life vehicles.

Response: We agree that the definition of ''motor vehicle scrap'' should be included in the final rule. We have added the definition in the EAF rule to this final rule. The definition of ''motor

vehicle scrap'' is specific to vehicles processed in a shredder. We do not see a need to revise the definition as suggested by the commenter.

Comment: One commenter requested EPA to add the definition of ''nonferrous metal'' in 40 CFR 471.02 of the effluent guidelines for nonferrous metals forming and metal powders point source category. Under 40 CFR 471.02(a), ''nonferrous metal'' is defined as ''any pure metal other than iron or any metal alloy for which a metal other than iron is its major constituent in percent by weight.'' This definition distinguishes the primary and secondary production of other metals or alloys (which are covered by air emission standards for other source categories) from the ferrous metals iron and steel.

Response: We added this definition of ''nonferrous metal'' to the final rule except that we changed the phrase ''a metal other than iron'' to ''an element other than iron''.

Comment: Two commenters recommended that EPA provide State and local agencies with sufficient additional grants so that they may participate in the implementation of additional area source rules. According to the commenters, Federal grants currently fall far short of what is needed to support State and local agencies in carrying out their existing responsibilities, and budget requests for the last 2 years have called for additional cuts. The commenters claimed that, without additional funding, some State and local air agencies may not be able to adopt and enforce additional area source rules. One commenter further stated that, even for permitting authorities that do not adopt these area source rules, it is possible that these rules will increase their work loads and resource needs. The commenter stated that, for example, synthetic minor permits (or Federally Enforceable State Operating Permits) will need to incorporate all applicable requirements, including area source standards. Noting that the title V permit fee funds are not available for these efforts, the commenter asserted that many State and local air agencies do not have sufficient resources for these responsibilities.

Response: State and local air programs are an important and integral part of the regulatory scheme under the CAA. As always, EPA recognizes the efforts of State and local agencies in taking delegations to implement and enforce CAA requirements, including the area source standards under section 112. We understand the importance of adequate resources for State and local agencies to run these programs; however, we do not believe that this issue can be addressed through this rulemaking.

In this rulemaking, EPA is promulgating standards for the Iron Foundries and Steel Foundries area source categories that reflect the practices currently in use by sources in these area source categories, and these standards represent what constitutes GACT for these categories under section 112(d)(5). GACT standards are technology-based standards. The level of State and local resources needed to implement this rule is not a factor that we consider in determining what constitutes GACT under section 112(d)(5). Moreover, we note that the commenters did not challenge our proposed determination to exempt from title V the Iron Foundries and Steel Foundries area source categories, although they did recommend that the pollution prevention standard for mercury be incorporated in title V permits.

Although the resource issue cannot be resolved through this rulemaking for the reason stated above, EPA remains committed to working with State and local agencies to implement this rule. State and local agencies that receive grants for continuing air programs under CAA section 105 should work with their project officer to determine what resources are necessary to implement and enforce the area source standards. EPA will continue to provide the resources appropriated for section 105 grants consistent with the statute and the allotment formula developed pursuant to the statute.

F. Impact Estimates

1. Environmental Impacts

Comment: Fifteen commenters stated that the emission reductions that can be achieved from uncontrolled EIFs are overestimated because EPA used an unrepresentative emission factor. Twelve commenters stated that EPA should use ''an already well-referenced PM emission factor that is representative and technically defensible''. One commenter recommended that EPA use the current emission factor in AP–42 (0.9 lb/ton). Another commenter recommended basing the emission factor on data reported by Shaw (1982). Twelve of the commenters described the dataset as limited and problematic as much of the data are not verifiable and one commenter said that the baghouse catch data were suspect.

Response: First, the impact assessment performed was to assess the impacts of the EIFs that could not meet the PM or metal HAP emission limit without a control device. To develop an assessment of the worst-case economic impacts, we assumed all EIFs would have to add a control device. In actuality, we do believe that a significant portion (approximately one-half) of EIFs will be able to demonstrate compliance with the 0.8 lb/ton PM emission limit or the alternative 0.06 lb/ton metal HAP limit without installing additional controls. We agree that the EIFs that do meet this limit are ''clean burning.'' However, available data indicate that many EIFs may have PM emissions that significantly exceed this limit. The PM emission factor used previously was developed to model the emission reductions and cost-effectiveness of these reductions of the EIFs that could not meet the PM emission limit as proposed.

In response to these comments, we reevaluated the data used to assess the PM emission factor for EIFs. We did identify a few ''baghouse catch'' data that included operations other than EIF melting operations, such as inoculation. While we do expect that capture and control systems will likely help to reduce PM emissions from inoculation, inoculation emissions are primarily magnesium which is not a HAP metal. As such, we do not expect that these PM will contribute significantly to the total metal HAP emissions. Therefore, we did exclude these data although these PM emissions could be considered a co-benefit of the proposed furnace emission controls. We also included the data from Shaw, as requested by one commenter, although these data are provided only as secondary references, all of which are 30 years old or more. We also considered more recent Casting Emissions Reduction Program (CERP) data. The augmented data set supports the average emission factor reported in AP–42, but also indicates that those EIFs not able to meet the 0.8 lb/ton emission limit have an average emission factor of 1.6 lb/ton. The augmented data set and basic statistics for the data set are provided in a memorandum to the docket.

Although this PM emission factor is 20 percent lower than the emission factor used in developing the nationwide impacts for the proposed rule, as stated previously, the second and major reason the PM reductions (as well as the total control costs) were overstated in the impacts as estimated for the proposed rule is that many EIF will be able to meet the proposed rule without additional control requirements (or with the installation of suppression controls only). To develop a more

realistic assessment of the nationwide impacts, we performed a Monte Carlo assessment. Based on the emission data compiled as described previously, a log-normal distribution was used with a mean of −0.25 and standard deviation of 0.7. This distribution leads to a median emission factor of 0.8 lb/ton and an arithmetic average emission factor of 1.0 lb/ton, which agrees well with the AP–42 emission factor of 0.9 lb/ton. By using the Monte Carlo analysis, we address both reasons the PM emission reductions were overestimated at proposal.

Comment: One commenter stated that EPA should use the default average emissions factor for uncontrolled EIFs used in developing the impact estimates. Furthermore, the commenter suggested that the default factor used by EPA in the impacts analysis is too high and lower average emission factors should be used for both the impacts analysis and the default factor for emissions averaging.

Response: We disagree with the commenter that the average emissions factor for uncontrolled EIFs should be used as a default factor. If we allowed foundries to use the average emissions factor, then many of the uncontrolled EIFs would have actual emissions higher than the assumed emissions. A default factor of 3 lb/ton of PM was selected at proposal as an upper end estimate of the emissions factor for uncontrolled EIFs. Based on the expanded PM data set, a 3 lb/ton emissions factor represents the 98th percentile of the distribution. Using a 3 lb/ton PM default emissions factor for uncontrolled EIFs provides a very high degree of assurance that an emissions averaging group meets the 0.8 lb/ton emission limit when not measuring the emissions from all uncontrolled furnaces. EPA believes that it is appropriate to use a conservative figure for the default emissions factor, in part because foundries have the option to establish an actual emissions rate by testing. However, EPA recognizes that using a 3 lb/ton emission factor overestimates emissions from 98 percent of uncontrolled furnaces, and believes that using an emissions factor based on a somewhat lower percentile would reduce the burden of initial testing and still provide adequate assurance that the 0.8 lb/ton emission limit is met for multiple furnaces using emissions averaging. Therefore, we have revised the proposed rule to allow uncontrolled EIFs that are not equipped with a capture system and have not been previously tested to assume an uncontrolled emission factor of 2 lb/ton, which is approximately the 75th percentile. If a lower emissions rate is needed for an uncontrolled EIF in order for the emissions averaging group to meet the emissions limit, the foundry has the option to test any uncontrolled EIF and establish a measured emissions rate for use in the emissions averaging equation.

Comment: One commenter stated that EPA overstated HAP emission reductions and did not fully take into consideration the different types of melting furnaces and the variety of control equipment available.

Response: Metal HAP emission reductions were overstated for the same reasons that the PM emission reductions were overstated. However, we respectfully disagree with the commenter with respect to the types of furnaces and controls. The emission and cost impacts were performed on a furnace specific basis, considering the type of control device installed for each furnace. We also evaluated certain design aspects of the control system to assess which controls could or could not meet the 0.8 lb/ton PM emissions limit.

Comment: One commenter noted that some induction furnaces only tap about one-third of the molten metal, and are never fully emptied except to work on the EIF refractory. The commenter said that these furnaces can be sources of small quantities of emissions even when the unit is not melting so that the control system would need to operate continuously, even when the plant is not actively melting and that this makes it difficult to know what the actual emissions are in terms of tons of metal melted as some of the emissions are not directly related to production.

Response: We disagree with the commenter. For periods when the furnace is idling, a suppression cover is all that is necessary to ensure emissions are not released from the furnace. The cover will also reduce heat losses from the furnace, reducing overall electricity costs (especially as compared to running the control system continuously). We acknowledge the difficulty in assessing the true emissions from these sources, which is why the long-term baghouse data were considered to be highly relevant in assessing the emission potential of EIFs.

2. Cost Impacts

Comment: Sixteen commenters stated that EPA underestimated the costs of the capture and control equipment needed to retrofit an existing uncontrolled EIF with a control device. One commenter noted that some retrofits may require substantial furnace modifications, site preparation, and business interruption, the costs of which were not included in EPA's estimates. A third commenter stated that EPA had previously concluded that a retrofit cost factor of 2.8 was appropriate for an existing EIF. Another commenter explained that business interruption costs associated with a control system retrofit would directly impact the economic viability of the foundry.

Ten of the commenters stated that EPA's cost estimates were understated because more EIFs than those identified by EPA will need to install controls to meet the proposed emission limits.

One commenter stated that operating cost factors were supplied by individual companies and that the labor included overhead and bags were changed every 2 years. This commenter also stated that the current cost of capital equipment loans range from 7.5 to 9 percent, so annualizing costs using 7 percent understates the annual cost for the capital equipment.

One commenter stated that the capital cost formula used by EPA is reasonably accurate if their furnaces can be modified to use a close capture system. If not, the commenter estimated that 250,000 actual cubic feet per meter (acfm) of gas would need to be collected (versus 40,000 acfm), which would increase the size of the cost of the baghouse control system by nearly a factor of five. The commenter also stated that the operating cost formula used by EPA appeared to significantly underestimate the on-going costs. The commenter stated that EPA's estimate for melting 17,000 tpy production rate, operating costs of $72,600 per year would be estimated while the commenter estimates the cost for electricity and compressed air alone to be approximately $103,000 per year for the 40,000 acfm system. The commenter also noted that additional costs of heating make-up air (to keep from drawing cold air into the building) could increase operating costs by another $100,000 per year and maintenance costs were estimated to be $15,000 per year. The commenter also noted that, based on the types of EIFs used at their foundry, the emission controls would have to run 24 hours a day, 365 days per year because the furnaces always have molten metal in them.

Response: First, while we have revised the cost impacts, we consider that the control costs estimated for EIFs are likely to be biased high because we assume the EIFs that cannot meet the 0.8 lb/ton PM emission limit will install baghouse control devices. Other control systems, such as wet scrubbers or ESPs are expected to be able to meet the metal

melting furnace emission limit for existing sources and typically at less total cost compared to baghouse control systems. For example, in reviewing the costs submitted by one of the commenters, the design performance of the baghouses was far greater than needed to comply with the proposed rule (designed to meet 0.0035 gr/dscf). Based on other commenters, EPA's estimate of the capital equipment cost for the baghouse system is not understated. Consequently, we did not revise the capital cost estimate for the baghouse system itself as we expect these capital cost estimates to already be conservatively high.

We do note that there may be additional retrofit costs for those induction furnaces that do not have existing capture and control system, although we do not agree that a retrofit factor of 2.8 is warranted or appropriate. We increased the capital costs needed to install a capture system when one is not in place. At proposal, we estimated the cost of the capture system as 15 percent of the cost of the baghouse system. For this final rule, we estimated the cost of the capture system/furnace modification as 40 percent of the cost of the baghouse system. That is, for a baghouse system projected to cost $1 million, capture system/furnace modifications were estimated to cost an additional $400,000. We also substantially increased the projected cost of testing the EIFs when no capture system is in place. For furnaces that already have a capture system (but no controls), then just costs of the baghouse system were attributed to the furnace.

In addition, based on our review of the comments, we adjusted and increased the overall pressure drop through the system, which significantly increased the projected electricity costs. We also changed the frequency of bag replacement from 4 years to 2 years. Together with the additional capital costs, the control costs for EIFs increased compared to the estimates at proposal. However, we did not include the higher costs reported by some of the commenters, such as assuming bag replacement requiring a full-time person over a year to replace the bags or utilizing labor rates reported to include overhead, but then multiplying those rates by an overhead factor.

We disagree with the commenter that the control costs were under-estimated because more EIFs would need to be controlled than were estimated. Although the database used does not include every area source foundry in the country, we expect the existing database to include a very high majority of the larger area source foundries. Additionally, as noted in developing the emission impacts, we assumed that every EIF that was in the database required controls. As such, we believe that we overestimated the nationwide control costs because many existing EIFs are expected to meet the 0.8 lb/ton emission limit without installing additional controls. Furthermore, ''missing'' EIF from the database impact both emission reductions and costs, so that the overall cost-effectiveness projected for the rule will not be significantly impacted if some EIFs are ''missing'' from the database.

Finally, we acknowledge that interest rates vary, but the 7 percent annual interest rate is our best estimate for long-term cost of capital.

3. Cost Effectiveness Impacts

Comment: Several commenters stated that the emission limits for metal melting furnaces, and specifically for EIF, are not cost-effective. One commenter stated that the cost per ton of PM or metal HAP emissions reduced is about four times higher than the EPA estimates due to the combination of EPA's overestimate of emission reductions and underestimate of emission control costs. Five commenters stated that EPA did not propose controls for pouring because the cost to control pouring ranged from $30,000 to $110,000 per ton of PM removed. The commenters said that because the commenters' cost-effectiveness for EIF controls are in this range, EPA should conclude that melting furnace controls are also not cost-effective. Another commenter recommended that EPA re-evaluate the need to control area source melting furnaces.

Two commenters stated that, if the appropriate emission factors and compliance costs are used, the proposed rule is even less cost-effective. One commenter compared the cost effectiveness of the proposed rule to the MACT standard for Industrial and Institutional Boilers and Process Heaters, which was approximately $33,000 per ton of HAP removed as further rationale demonstrating that the proposed rule is not cost-effective. Another commenter stated that, based on the cost estimate, the rule is not cost-effective. Using EPA's emission factor of 2 lbs/ton and assuming a PM emissions limit of 0.8 lbs/ton, the cost of controlling EIFs at his facility is approximately $30,000 to $50,000 per ton of PM reduced, and these costs increase significantly if one uses the emission factor reported in AP–42. The commenter said that the requirement for EIF controls for new units appeared to be reasonable, but that the cost to control existing EIFs was unreasonable.

Response: The commenters are mistaken—we did not reject emission controls for pouring on the basis of cost effectiveness. We stated clearly at proposal (72 FR 52987) that we were not regulating pouring at area source foundries for two reasons, and neither reason was cost effectiveness. We noted that the quantity of metal HAP in pouring emissions is very small relative to the emissions from melting furnaces. Further, we explained there are technical difficulties in the capture and control of pouring emissions because of the need to access the molten metal during the pouring process.

We also disagree with the commenter's estimate of cost effectiveness of $30,000 to $50,000 per ton of PM for EIFs. We have re-evaluated our cost estimates, and based on our revised analysis for the final rule, we estimate the cost effectiveness for PM as $13,000 per ton.

Comment: One commenter stated that the GACT standard for EIFs was not as cost-effective and was more stringent than the MACT standard for EIFs. The commenter also noted that the MACT standard reduced metal HAP by 102 tpy compared to only 19 tpy for the GACT standard.

Response: We developed the GACT standard for large area source foundries (including EIFs) by assessing the technologies and management practices that are generally available for large area source foundries. We selected a format of ''lb/ton'' as the most appropriate format for measuring emission control performance, and we concluded that 0.8 lb PM/ton of metal charged (or 0.06 lb total metal HAP/ton of metal charged), together with the pollution prevention management practices of the rule, represent GACT for this subcategory. In contrast, the MACT standard of 0.005 grains per dry standard cubic feet (gr/dscf) was based on the emissions level achieved by the average of the top 12 percent of major sources. We disagree that the GACT standard for EIFs (0.8 lb/ton) is more stringent than the MACT standard (0.005 gr/dscf). For example, for an EIF operating at 5 tons per hour (tph) and 14,600 actual cubic feet per minute (acfm) of gas flow, the MACT standard is six times more stringent. For larger EIFs operating at 20 tph and 36,800 acfm, the MACT standard is 10 times more stringent.

In addition, one of the reasons the cost effectiveness estimates differ between the major source MACT standard and this rule is that the major source rule applies to larger foundries with greater economies of scale. That

said, the HAP emission reductions achieved by the GACT standard that we are finalizing today are significant.

Moreover, the commenter's comparisons of cost effectiveness and emission reductions between the major source MACT standard and the GACT standard at issue in this rule are not relevant. As we have explained previously, Congress expressly authorized EPA to issue alternative emission standards for area sources. Under section 112(d)(5), EPA can promulgate standards that provide for the use of generally available control technologies or management practices (GACT) for area sources listed pursuant to section 112(c)(3). EPA has done precisely that in this case. The fundamental issue here is whether the GACT standard described above complies with the requirements of section 112(d)(5), and for all of the reasons described in this preamble and the docket in support of this final rule, the standard described above for large foundries represents GACT.

Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. There are approximately 83 large area source foundries, and approximately two thirds of these foundries achieve the GACT level of control (0.8 lb/ton). We also examined options more stringent than 0.8 lb/ton and concluded the more stringent options were not GACT because of the increased cost, due primarily to the fact that a significant percentage of the foundries would have to retrofit or replace their existing emission control systems. (See 72 FR 52993, September 17, 2007.) As we explained in an earlier comment response, we re-evaluated the economic impacts of the rule as proposed and made appropriate changes to improve our cost estimates and reduce adverse economic impacts. For example, we estimated that three of the large area source foundries that might have to install additional controls under the rule as proposed would incur costs that were greater than 3 percent of revenues based on our revised analysis of impacts. To minimize economic impacts, we evaluated an alternative foundry size threshold of 20,000 tpy instead of 10,000 tpy and found that none of the 30 large area source foundries that might have to install controls would incur costs greater than 3 percent of revenues. We also concluded that a threshold of 20,000 tpy still resulted in significant emission reductions for metal HAP. In addition, only nine plants were estimated to incur costs that were over 1 percent of sales. Consequently, we revised the proposed rule to reduce economic impacts while maintaining significant emission reductions of HAP metals.

The final GACT standard for large foundries will provide reductions of 13.2 tpy of compounds of chromium, lead, manganese, and nickel, which are all ''Urban HAP'' for which this category was listed pursuant to sections 112(c)(3) and 112(k). EPA listed these metal compounds as Urban HAP because of their significant adverse health effects. A large portion of the reductions of these Urban HAP will occur in the urban areas that EPA identified in the Integrated Urban Air Toxics Strategy. See CAA 112(k)(3)(C).

The primary HAP emitted from melting iron and steel scrap are manganese and lead with smaller levels of chromium and nickel. These metals (especially manganese) are inherent components of the scrap that is melted, and at the high temperatures used in the melting furnaces, the HAP metals are unavoidably vaporized and emitted. These metal HAP are present in the particulate matter emissions from the furnace, and because they are in particulate form, they can be captured and removed from the gas stream at high efficiency by control devices designed to capture PM (such as baghouses). The nature of these emissions and the HAP composition are unique to iron and steel melting furnaces and are quite different from the emissions from other processes and operations that do not involve melting metal scrap at high temperatures.

There are adverse health effects associated with the metal HAP emitted from melting furnaces such as EIF. Hexavalent chromium and certain forms of nickel are known human carcinogens. Lead is toxic at low concentrations, and children are particularly sensitive to the chronic effects of lead. Chronic exposure to manganese affects the central nervous system. Additional details on the health and environmental effects of these HAP can be found at *http://www.epa.gov/ttn/atw/hlthef/hapindex.html*. In addition, 75 percent of the emissions are in the form of fine particulate matter, and EPA studies have found that fine particles continue to be a significant source of health risks in many urban areas.

In summary, the GACT standard for EIFs will reduce the emissions of urban metal HAP from area source foundries in urban areas, which will reduce the adverse health effects associated with these pollutants. As discussed earlier, these reductions will be achieved by technology and management practices that are generally available at large area source foundries. Furthermore, we have incorporated into this final rule certain provisions of the General Provisions (40 CFR part 63, subpart A) that afford sources additional flexibility. For example, existing sources can request an additional year to comply with the standard if they can demonstrate to the permitting authority that such additional time is needed to install controls. See 40 CFR 63.6(i)(4)(1)(A). In addition, EPA's regulations implementing CAA section 112(l) provide further flexibility. Specifically, 40 CFR part 63, subpart E provides that a State may seek approval of permit terms and conditions that differ from those specified in a section 112 rule, if the State can demonstrate that the terms and conditions of the permit are equivalent to the requirements of this rule. The procedures for seeking approval of such a permit are set forth in detail in 40 CFR 63.94.

4. Economic Impacts

Comment: One commenter stated that EPA's economic impact assessment is deficient. The commenter stated that EPA defined this rule as a ''significant regulatory action'' under Executive Order 12866, a definition that triggers specific requirements to provide economic impact analyses that include a statement of need for the proposed rule, examination of alternative approaches and analysis of social benefits and costs. The commenter stated that EPA has not met these requirements in a clear and comprehensive manner that allows for the evaluation of the regulatory costs and impacts. The commenter recommended that EPA provide a direct listing of the projected revenue and compliance costs for each foundry.

Response: The proposed rule (and this final rule) was declared a ''significant regulatory action'' by the Office of Management and Budget because it raised novel legal or policy issues. In the preamble to the proposed rule and supporting material in the docket, EPA met its obligations under section 6(a)(3)(B) of Executive Order 12866 to provide ''a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need'' as well as ''an assessment of the potential costs and benefits of the regulatory action''. Section 6(a)(3)(C) of Executive Order 12866 imposes additional obligations on agencies for economically significant rules, but these additional obligations do not apply to this rule because it is not economically significant.

We consider that the level of analysis provided for the proposed and final rule is appropriate for this rulemaking. We relied on nationwide impact estimates for the proposed rule (instead of uncertain facility-specific analyses) and included the relevant analyses in the docket for public review at proposal (Docket Item No. EPA–HQ–OAR–2006–0359–0007).

A Monte Carlo analysis was used to assess the impacts for this final rule. This type of analysis provides an excellent means of determining the average nationwide impacts including average control cost estimates, average emission reductions, average number of foundries exceeding a set cost-to-revenue ratio, etc. The Monte Carlo analysis also provides a means to assess the uncertainty associated with these impacts. Although the Monte Carlo analysis provides meaningful nationwide impacts, it does not provide facility-specific impacts. We have included in the docket all relevant economic impacts analyses conducted for this final rule.

Comment: One commenter stated that EPA underestimated the economic impact because the compliance costs were underestimated. One commenter stated that his facility was a small foundry that exceeded the 10,000 tpy threshold. The commenter stated that their revenue was approximately $5 to 6 million and the control equipment costs would exceed $1 million for their foundry, which would cause the facility to declare bankruptcy. Another commenter stated that the rule, as proposed, would likely cause their facility to close, resulting in a loss of jobs and exporting the business to countries that have little or no environmental regulations. Another commenter stated that the proposed rule would have a significant negative financial impact on their business and disagreed with the proposed rule requirements.

Response: As described previously, after reviewing and revising both the emission and cost impact estimates, the impacts of the rule were re-evaluated. The number of existing foundries potentially impacted greater than 3 percent of revenues increased to three based on the revised analysis. Therefore, based on the revised impact analysis, we concluded that the proposed rule using a 10,000 tpy threshold for existing large foundries was not appropriate. We evaluated alternative standards using the revised impacts methodology and selected a 20,000 tpy threshold for existing large foundries for this final rule. We estimate no foundries will be impacted greater than 3 percent of revenues at this higher production threshold.

Comment: Six commenters recommended that the economic impacts be evaluated on the furnace level rather than on the foundry level. The commenters requested that EPA include only the revenue based on the portion of the metal produced from a particular furnace that is in need of additional controls. The commenters stated that this approach will reduce the revenue for many foundries and make it more likely that the cost-to-revenue ratio exceeds benchmark thresholds.

Response: We disagree with the commenters. The cost-to-revenue benchmark is typically evaluated at the entity level. For this analysis, we evaluated the impacts on the foundry level. It is possible that some entities operate several foundries. As such, we may have already overestimated the number of entities impacted greater than a given cost-to-revenue benchmark.

Comment: One commenter stated that the cost-to-revenue ratio benchmark thresholds that EPA used are inappropriate for the foundry industry. The commenter provided data of the ''pre-tax profitability'' (defined by the commenter as income subject to tax divided by total business receipts) for foundries with assets less than $10 million averages only 1.02 percent, which is much less than the manufacturing industry as a whole. The commenter also stated that roughly 70 percent of foundries did not show a profit at all in 2002 and 2003. The commenter warned that recent reports indicating that profit margins of 5.4 percent were realized by foundries in 2005 and 2006 were not statistically designed and were therefore biased toward more profitable firms. If EPA does consider these recent reports, the commenter urged EPA to use an average profitability over the past 5 years as a better indicator of the affordability of compliance costs. The commenter also stated that U.S. foundries cannot pass on price increases to the consumer due to international competition, citing a 2005 U.S. International Trade Commission (ITC) report.

Eleven commenters stated that the rule would have an adverse economic impact on a significant number of foundries due to the industry's low profit margins and foreign competition. Six of these commenters also stated that the foundry industry has a common profit margin of approximately 2 percent so that impacts of 1 percent are significant to this industry.

Response: First, most foundries with 10,000 tpy or more of metal charged have assets of $10 million so the 1 percent profit margin quoted by one of the commenters for these smaller foundries is really immaterial. It is the profit margin for the larger foundries that are relevant to the foundries that are materially impacted by this final rule. Profit margins generally increase with revenue, therefore, the profit margin for foundries greater than 20,000 tpy are likely well above the 2 percent values suggested by the commenters, so that impacts of 1 percent would not impose a significant adverse economic impact. Based on our revised analysis and the 20,000 tpy threshold, we expect there will be no foundries impacted greater than 3 percent of revenues, at most only one foundry may be impacted greater than 2 percent, and an average of nine foundries would be impacted greater than 1 percent. As such, we estimate that there will not be a significant adverse economic impact for a substantial number of iron and steel foundry area sources subject to this final rule.

Comment: Six commenters stated that the capital investment costs of roughly $1 million will be incurred by many foundries, and that it will be difficult to secure financing for such a significant investment for a non-revenue-generating project. One of the commenters stated that the high capital investment that would be required by this rule is nearly three times the capital investment made in the plant (for income producing equipment) for all of 2007. The commenters recommended that EPA re-assess the economic impacts in light of their comments.

Response: We appreciate the difficulty making investment in non-income generating equipment, especially for small facilities. This was part of the consideration in selecting the higher 20,000 tpy threshold. However, we are required to establish area source standards based on our assessment of the industry and, for the reasons discussed in this preamble, we believe the control technologies and management practices described above represent GACT for the subcategories at issue in this final rule.

G. Miscellaneous

Comment: One commenter stated that some of the references in § 63.10890 need correction. In § 63.10892(c)(2), references are made to § 63.10892(b)(2) and (3) which do not exist and in § 63.10890(d)(4), there is a reference to (b)(2) which does not exist.

Response: We have revised the proposed rule to correct these citations.

Comment: One commenter requested that EPA specify the document retention

time for information not submitted to the agency.

Response: We have revised the proposed recordkeeping requirements for small and large foundries to specify a 5-year period for record retention.

V. Summary of Impacts of the Final Rule

We estimate that the final rule (using 20,000 tpy as the production capacity threshold for existing affected sources) will reduce emissions of HAP metal compounds by 13.7 tpy and will reduce PM emissions by 380 tpy from the baseline. Additionally, the final standard is expected to reduce emissions of organic HAP by 32 tpy. The total capital cost of the final standard is estimated at $17 million. The annual operating, maintenance, monitoring, recordkeeping, and reporting costs of the final standard are estimated at $3.2 million per year. The total annualized cost of the final standard, including the annualized cost of capital equipment, is estimated at $4.8 million. Additional information on our impact estimates on the sources is available in the docket. (See Docket Number EPA–HQ–OAR–2006–0359.)

The final standard is estimated to impact a total of 427 area source iron and steel foundries. When subcategorizing foundries by production thresholds, we estimate that 83 of these foundries are large iron and steel foundries and 344 foundries are small iron and steel foundries. Approximately 35 percent of the large iron and steel foundries are owned by small entities whereas 85 percent of the small iron and steel foundries are owned by small entities.

The secondary impacts include solid waste generated as a result of the PM emissions collected and energy impacts associated with operation of control devices. At a 20,000 tpy production capacity threshold, we estimate that 440 tpy of solid waste will be generated and an additional 4,400 megawatts per hour (MW–hr) of electrical energy will be consumed each year as a result of the final standard.

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 the Office of Management and Budget (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 requirements in this rule have been submitted for approval to the Office of Management and Budget (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 number 2267.02. The information collection requirements are not enforceable until OMB approves them.

The recordkeeping and reporting requirements in this final rule are based on the requirements in EPA's National Program for Mercury Switch Removal (a voluntary agreement with participating industries) and the NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information (other than emissions data) submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

All foundries are required to submit an initial notification that classifies their facility as a small or large foundry and a subsequent notification for any change in classification. All foundries also are required to maintain monthly production data to support their classification as a large or small foundry.

The final NESHAP requires small area source foundries to submit an initial notification of applicability and a notification of compliance status according to the requirements in the General Provisions (40 CFR part 63, subpart A). Small area source foundries also must report any deviation from the pollution prevention management standards in the semiannual report required by 40 CFR 63.10 of the general provisions. Large area source foundries are required to prepare and follow an O&M plan, conduct initial performance tests and follow-up tests every 5 years, conduct control device inspections or monitor control device operating parameters, conduct opacity tests every 6 months for fugitive emissions, inspect and repair capture systems, and keep records to document compliance with the rule requirements. The owner or operator of an existing affected source is allowed to certify compliance with the emissions limits based on the results of prior performance tests that meet the rule requirements; the owner or operator must provide advance notification of the intent to use a prior performance test instead of conducting a new test. If compliance with the emissions limits for metal melting furnaces is demonstrated through emissions averaging, the owner or operator is required to demonstrate compliance for each calendar month using a calculation procedure in the rule. The owner or operator of a large foundry is subject to all requirements in the General Provisions (40 CFR part 63, subpart A), including the requirements in 40 CFR 63.6(e) for startup, shutdown, and malfunction records and reports and the recordkeeping and reporting requirements in 40 CFR 63.10. The semiannual report must include summary information on excursions or exceedances, monitor downtime incidents, and deviations from management practices and operation and maintenance requirements.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 6,064 labor hours per year at a cost of $420,718 for the 427 area sources, with annualized capital costs of $8,490 and no O&M costs. No new area sources are estimated during the next 3 years. These estimates represent the maximum burden that would be imposed by the final standards (based on a subcategorization using an annual metal melt production threshold of 20,000 tons for an existing affected source classified as a small foundry).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, 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 are listed in 40 CFR part 9. When this ICR is approved by OMB, the

Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

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 final rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 500 employees for NAICS codes 331511, 331512, and 331513); (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.

After considering the economic impacts of the final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are iron and steel foundries that are area sources. We estimate that this rule will impact a total of 427 area source iron and steel foundries; 319 of these foundries are small entities based on employment. We estimate that 83 of these foundries are large iron and steel foundries (metal melt production greater than 20,000 tpy), and 344 foundries are small iron and steel foundries (metal melt production of 20,000 tpy or less). Approximately 45 percent of the large iron and steel foundries are owned by small entities whereas 85 percent of the small iron and steel foundries are owned by small entities. Our analysis shows that small entity compliance costs, as assessed by the foundry's cost-to-sales ratio, are expected to range from 0.01 to 2.3 percent. The analysis also shows that of the 30 existing foundries owned by small entities subject to the requirements for large foundries (i.e., exceeding 20,000 tpy melt production), no small entity will incur economic impacts exceeding 3 percent of its revenue and only one small entity will incur economic impacts exceeding 2 percent of its revenue.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA has nonetheless tried to reduce the impact of this rule on small entities. This final rule minimizes the impact on small entities by applying special provisions for small foundries that melt low quantities of metal (less than 20,000 tpy). Small iron and steel foundries are required to prepare and follow pollution prevention management practices for metallic scrap and binder formulations, submit one-time notifications, monitor their metal melting rate on a monthly basis, report deviations if they occur, and keep certain records. Although this final rule contains requirements for new area sources, we are not specifically aware of any new area sources being constructed now or planned in the next 3 years, and consequently, we did not estimate any impacts for new sources.

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 by 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 this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This final rule is not expected to impact State, local, or tribal governments. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. This final rule contains no requirements that apply to such governments, and imposes no obligations upon them.

E. Executive Order 13132: Federalism

Executive Order 13132 entitled ''Federalism'' (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'' is 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.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to this final rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 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.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will 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. This final rule imposes no requirements on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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 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. This final 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 Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This final 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 final rule is not likely to have any adverse energy effects because energy requirements will not be significantly impacted by the additional pollution controls or other equipment that are required by this final rule.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113, Section 12(d), 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 final rule involves technical standards. The EPA cites the following standards: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5, 5B, 5D, 5F, 5I, 9, 22, and 29 in 40 CFR part 60, appendix A; and EPA Method 9095B, ''Paint Filter Liquids Test,'' (revision 2, November 1994) (incorporated by reference-see § 63.14).

Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to the EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 5B, 5D, 5F, 9, 22, 29, or 9095B. The search and review results are in the docket for this rule.

One VCS was identified as applicable to this final rule. The standard ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference-see § 63.14) is cited in this final rule for its manual method for measuring the oxygen, carbon dioxide, and CO 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 13 other VCS. EPA determined that these 13 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in this final rule were impractical alternatives to EPA test methods for the purposes of this final rule. Therefore, EPA is not adopting these standards for this purpose. The reasons for the determinations for the 13 methods are discussed in a memorandum in the docket for this final rule.

For the methods required or referenced by this final 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 40 CFR 63.7(f) and 40 CFR 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 final 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. The nationwide standards will reduce HAP emissions and thus decrease the amount of emissions to which all affected populations are exposed.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. The EPA will submit a report containing this final 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 final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule will be effective on January 2, 2008.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporations by reference, Reporting and recordkeeping requirements.

Dated: December 14, 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 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 paragraphs (i)(1) and (k)(1)(i) through (iv) 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 to subpart DDDDD of this part, and Table 1 to subpart ZZZZZ of this part.

* * * * *

(k) * * *

(1) * * *

(i) Method 0023A, ''Sampling Method for Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofuran Emissions from Stationary Sources,'' dated December 1996, IBR approved for § 63.1208(b)(1) of Subpart EEE of this part.

(ii) Method 9071B, ''n-Hexane Extractable Material (HEM) for Sludge, Sediment, and Solid Samples,'' dated April 1998, IBR approved for § 63.7824(e) of Subpart FFFFF of this part.

(iii) Method 9095A, ''Paint Filter Liquids Test,'' dated December 1996, IBR approved for §§ 63.7700(b) and 63.7765 of Subpart EEEEE of this part.

(iv) Method 9095B, ''Paint Filter Liquids Test,'' (revision 2), dated November 2004, IBR approved for the definition of ''Free organic liquids'' in § 63.10692, § 63.10885(a)(1), and the definition of ''Free liquids'' in § 63.10906.

* * * * *

■ 3. Part 63 is amended by adding subpart ZZZZZ to read as follows:

Subpart ZZZZZ—National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources

Sec.

Applicability and Compliance Dates

63.10880 Am I subject to this subpart?
63.10881 What are my compliance dates?

Pollution Prevention Management Practices for New and Existing Affected Sources

63.10885 What are my management practices for metallic scrap and mercury switches?
63.10886 What are my management practices for binder formulations?

Requirements for New and Existing Affected Sources Classified as Small Foundries

63.10890 What are my management practices and compliance requirements?

Requirements for New and Existing Affected Sources Classified as Large Foundries

63.10895 What are my standards and management practices?
63.10896 What are my operation and maintenance requirements?
63.10897 What are my monitoring requirements?
63.10898 What are my performance test requirements?
63.10899 What are my recordkeeping and reporting requirements?
63.10900 What parts of the General Provisions apply to my large foundry?

Other Requirements and Information

63.10905 Who implements and enforces this subpart?
63.10906 What definitions apply to this subpart?

Tables to Subpart ZZZZZ of Part 63

Table 1 to Subpart ZZZZZ of Part 63—Performance Test Requirements for New and Existing Affected Sources Classified as Large Foundries

Table 2 to Subpart ZZZZZ of Part 63—Establishment of Operating Limits for New Affected Sources Classified as Large Foundries

Table 3 to Subpart ZZZZZ of Part 63—Applicability of General Provisions to New and Existing Affected Sources Classified as Large Foundries

Table 4 to Subpart ZZZZZ of Part 63—Compliance Certifications for New and Existing Affected Sources Classified as Large Foundries

Subpart ZZZZZ—National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources

Applicability and Compliance Dates

§ 63.10880 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate an iron and steel foundry 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 iron and steel foundry.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source before September 17, 2007.

(2) An affected source is new if you commenced construction or reconstruction of the affected source on or after September 17, 2007. If an affected source is not new pursuant to the preceding sentence, it is not new as a result of a change in its compliance obligations pursuant to § 63.10881(d).

(c) On and after January 2, 2008, if your iron and steel foundry becomes a major source as defined in § 63.2, you must meet the requirements of 40 CFR part 63, subpart EEEEE.

(d) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act.

(e) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

(f) If you own or operate an existing affected source, you must determine the initial applicability of the requirements of this subpart to a small foundry or a large foundry based on your facility's metal melt production for calendar year 2008. If the metal melt production for calendar year 2008 is 20,000 tons or less, your area source is a small foundry. If your metal melt production for calendar year 2008 is greater than 20,000 tons, your area source is a large foundry. You must submit a written notification to the Administrator that identifies your area source as a small foundry or a large foundry no later than January 2, 2009.

(g) If you own or operate a new affected source, you must determine the initial applicability of the requirements of this subpart to a small foundry or a large foundry based on your facility's annual metal melting capacity at startup. If the annual metal melting capacity is 10,000 tons or less, your area source is a small foundry. If the annual metal melting capacity is greater than 10,000 tons, your area source is a large foundry. You must submit a written notification to the Administrator that identifies your area source as a small foundry or a large foundry no later than 120 days after startup.

§ 63.10881 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions of this subpart by the dates in paragraphs (a)(1) through (3) of this section.

(1) Not later than January 2, 2009 for the pollution prevention management practices for metallic scrap in § 63.10885(a) and binder formulations in § 63.10886.

(2) Not later than January 4, 2010 for the pollution prevention management practices for mercury in § 63.10885(b).

(3) Except as provided in paragraph (d) of this section, not later than 2 years after the date of your large foundry's notification of the initial determination required in § 63.10880(f) for the standards and management practices in § 63.10895.

(b) If you have a new affected source for which the initial startup date is on or before January 2, 2008, you must achieve compliance with the provisions of this subpart not later than January 2, 2008.

(c) If you own or operate a new affected source for which the initial startup date is after January 2, 2008, you must achieve compliance with the provisions of this subpart upon startup of your affected source.

(d) Following the initial determination for an existing affected source required in § 63.10880(f),

(1) Beginning January 1, 2010, if the annual metal melt production of your small foundry exceeds 20,000 tons during the preceding calendar year, you must submit a notification of foundry reclassification to the Administrator within 30 days and comply with the requirements in paragraphs (d)(1)(i) or (ii) of this section, as applicable.

(i) If your small foundry has never been classified as a large foundry, you must comply with the requirements for a large foundry no later than 2 years after the date of your foundry's notification that the annual metal melt production exceeded 20,000 tons.

(ii) If your small foundry had previously been classified as a large foundry, you must comply with the requirements for a large foundry no later than the date of your foundry's most recent notification that the annual metal melt production exceeded 20,000 tons.

(2) If your facility is initially classified as a large foundry (or your small foundry subsequently becomes a large foundry), you must comply with the requirements for a large foundry for at least 3 years before reclassifying your facility as a small foundry, even if your annual metal melt production falls below 20,000 tons. After 3 years, you may reclassify your facility as a small foundry provided your annual metal melt production for the preceding calendar year was 20,000 tons or less. If you reclassify your large foundry as a small foundry, you must submit a notification of reclassification to the Administrator within 30 days and comply with the requirements for a small foundry no later than the date you notify the Administrator of the reclassification. If the annual metal melt production exceeds 20,000 tons during a subsequent year, you must submit a notification of reclassification to the Administrator within 30 days and comply with the requirements for a large foundry no later than the date you notify the Administrator of the reclassification.

(e) Following the initial determination for a new affected source required in § 63.10880(g),

(1) If you increase the annual metal melt capacity of your small foundry to exceed 10,000 tons, you must submit a notification of reclassification to the Administrator within 30 days and comply with the requirements for a large foundry no later than the startup date for the new equipment, if applicable, or the date of issuance for your revised State or Federal operating permit.

(2) If your facility is initially classified as a large foundry (or your small foundry subsequently becomes a large foundry), you must comply with the requirements for a large foundry for at least 3 years before reclassifying your facility as a small foundry. After 3 years, you may reclassify your facility as a small foundry provided your most recent annual metal melt capacity is 10,000 tons or less. If you reclassify your large foundry as a small foundry, you must notify the Administrator within 30 days and comply with the requirements for a small foundry no later than the date your melting equipment was removed or taken out of service, if applicable, or the date of issuance for your revised State or Federal operating permit.

Pollution Prevention Management Practices for New and Existing Affected Sources

§ 63.10885 What are my management practices for metallic scrap and mercury switches?

(a) *Metallic scrap management program.* For each segregated metallic scrap storage area, bin or pile, you must comply with the materials acquisition requirements in paragraph (a)(1) or (2) of this section. You must keep a copy of the material specifications onsite and readily available to all personnel with material acquisition duties, and provide a copy to each of your scrap providers. You may have certain scrap subject to paragraph (a)(1) of this section and other scrap subject to paragraph (a)(2) of this section at your facility provided the metallic scrap remains segregated until charge make-up.

(1) *Restricted metallic scrap.* You must prepare and operate at all times according to written material specifications for the purchase and use of only metal ingots, pig iron, slitter, or other materials that do not include post-consumer automotive body scrap, post-consumer engine blocks, post-consumer oil filters, oily turnings, lead components, chlorinated plastics, or free liquids. For the purpose of this subpart, ''free liquids'' is defined as material that fails the paint filter test by EPA Method 9095B, ''Paint Filter Liquids Test'' (revision 2), November 2004 (incorporated by reference—see § 63.14). The requirements for no free liquids do not apply if the owner or operator can demonstrate that the free liquid is water that resulted from scrap exposure to rain.

(2) *General iron and steel scrap.* You must prepare and operate at all times according to written material specifications for the purchase and use of only iron and steel scrap that has been depleted (to the extent practicable) of organics and HAP metals in the charge materials used by the iron and steel foundry. The materials specifications must include at minimum the information specified in paragraph (a)(2)(i) or (ii) of this section.

(i) Except as provided in paragraph (a)(2)(ii) of this section, specifications for metallic scrap materials charged to a scrap preheater or metal melting furnace to be depleted (to the extent practicable) of the presence of used oil filters, chlorinated plastic parts, accessible lead-containing components (such as batteries and wheel weights), and a program to ensure the scrap materials are drained of free liquids.

(ii) For scrap charged to a cupola metal melting furnace that is equipped with an afterburner, specifications for metallic scrap materials to be depleted (to the extent practicable) of the presence of chlorinated plastics, accessible lead-containing components (such as batteries and wheel weights), and a program to ensure the scrap materials are drained of free liquids.

(b) *Mercury requirements.* For scrap containing motor vehicle scrap, you must procure the scrap pursuant to one of the compliance options in paragraphs (b)(1), (2), or (3) of this section for each scrap provider, contract, or shipment.

For scrap that does not contain motor vehicle scrap, you must procure the scrap pursuant to the requirements in paragraph (b)(4) of this section for each scrap provider, contract, or shipment. You may have one scrap provider, contract, or shipment subject to one compliance provision and others subject to another compliance provision.

(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. You must operate according to the plan as submitted during the review and approval process, operate according to the approved plan at all times after approval, and address any deficiency identified by the Administrator or delegated authority within 60 days following disapproval of a plan. You may request approval to revise the plan and may operate according to the revised plan unless and until the revision is disapproved by the Administrator or delegated authority. The Administrator or delegated authority may change the approval status of the plan upon 90-days written notice based upon the semiannual 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 the 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). The plan must include documentation of direction to appropriate staff to communicate to suppliers throughout the scrap supply chain the need to promote the removal of mercury switches from end-of-life vehicles. Upon the request of the Administrator or delegated authority, you must provide examples of materials that are used for outreach to suppliers, such as letters, contract language, policies for purchasing agents, and scrap inspection protocols;

(B) Provisions for obtaining assurance from scrap providers motor vehicle scrap provided to the facility meet the scrap specification;

(C) Provisions for periodic inspections 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 the 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 supplier 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)(ii)(A) of this section. This information can be submitted in aggregate form and does not have to be submitted for each shipment. 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. If you purchase motor vehicle scrap from a broker, you must certify that all scrap received from that broker was obtained from other scrap providers who participate in a program for the 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 Mercury Switch Recovery Program and the State of Maine Mercury Switch Removal Program are EPA-approved programs 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 to remove at least 80 percent of mercury switches from 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.

(iv) You must develop and maintain onsite a plan demonstrating the manner through which your facility is participating in the EPA-approved program.

(A) The plan must include facility-specific implementation elements, corporate-wide policies, and/or efforts coordinated by a trade association as appropriate for each facility.

(B) You must provide in the plan documentation of direction to appropriate staff to communicate to suppliers throughout the scrap supply chain the need to promote the removal or mercury switches from end-of-life vehicles. Upon the request of the Administrator or delegated authority, you must provide examples of materials that are used for outreach to suppliers, such as letters, contract language, policies for purchasing agents, and scrap inspection protocols.

(C) You must conduct periodic inspections or other means of corroboration to ensure that scrap providers are aware of the need for and are implementing appropriate steps to minimize the presence of mercury in scrap from end-of-life vehicles.

(3) *Option for specialty metal scrap.* You must certify in your notification of compliance status and maintain records of documentation 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.

(4) *Scrap that does not contain motor vehicle scrap.* For scrap not subject to the requirements in paragraphs (b)(1) through (3) of this section, you must certify in your notification of compliance status and maintain records of documentation that this scrap does not contain motor vehicle scrap.

§ 63.10886 What are my management practices for binder formulations?

For each furfuryl alcohol warm box mold or core making line at a new or existing iron and steel foundry, you must use a binder chemical formulation that does not use methanol as a specific ingredient of the catalyst formulation. This requirement does not apply to the resin portion of the binder system.

Requirements for New and Existing Affected Sources Classified as Small Foundries

§ 63.10890 What are my management practices and compliance requirements?

(a) You must comply with the pollution prevention management practices for metallic scrap and mercury switches in § 63.10885 and binder formulations in § 63.10886.

(b) You must submit an initial notification of applicability according to § 63.9(b)(2).

(c) You must submit a notification of compliance status according to § 63.9(h)(1)(i). You must send the notification of compliance status before the close of business on the 30th day after the applicable compliance date specified in § 63.10881. The notification must include the following compliance certifications, as applicable:

(1) ''This facility has prepared, and will operate by, written material specifications for metallic scrap according to § 63.10885(a)(1)'' and/or ''This facility has prepared, and will operate by, written material specifications for general iron and steel scrap according to § 63.10885(a)(2).''

(2) ''This facility has prepared, and will operate by, written material specifications for the removal of mercury switches and a site-specific plan implementing the material specifications according to § 63.10885(b)(1) and/or ''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 by the Administrator according to § 63.10885(b)(2) and has prepared a plan for participation in the EPA-approved program according to § 63.10885(b)(2)(iv)'' and/or ''The only materials from motor vehicles in the scrap charged to a metal melting furnace at this facility are materials recovered for their specialty alloy content in accordance with § 63.10885(b)(3) which are not reasonably expected to contain mercury switches'' and/or ''This facility complies with the requirements for scrap that does not contain motor vehicle scrap in accordance with § 63.10885(b)(4).''

(3) ''This facility complies with the no methanol requirement for the catalyst portion of each binder chemical formulation for a furfuryl alcohol warm box mold or core making line according to § 63.10886.''

(d) As required by § 63.10(b)(1), you must maintain files of all information (including all reports and notifications) for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. At a minimum, the most recent 2 years of data shall be retained on site. The remaining 3 years of data may be retained off site. Such files may be maintained on microfilm, on a computer, on computer floppy disks, on magnetic tape disks, or on microfiche.

(e) You must maintain records of the information specified in paragraphs (e)(1) through (7) of this section according to the requirements in § 63.10(b)(1).

(1) Records supporting your initial notification of applicability and your notification of compliance status according to § 63.10(b)(2)(xiv).

(2) Records of your written materials specifications according to § 63.10885(a) and records that demonstrate compliance with the requirements for restricted metallic scrap in § 63.10885(a)(1) and/or for the use of general scrap in § 63.10885(a)(2) and for mercury in § 63.10885(b)(1) through (3), as applicable. You must keep records documenting compliance with § 63.10885(b)(4) for scrap that does not contain motor vehicle scrap.

(3) If you are subject to the requirements for a site-specific plan for mercury switch removal under § 63.10885(b)(1), 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 a certification that the recovered mercury switches were recycled at RCRA-permitted facilities. The semiannual reports must include a certification that you have conducted periodic inspections or taken other means of corroboration as required under § 63.10885(b)(1)(ii)(C). You must identify which option in paragraph § 63.10885(b) applies to each scrap provider, contract, or shipment. You may include this information in the semiannual compliance reports required under paragraph (f) of this section.

(4) If you are subject to the option for approved mercury programs under § 63.10885(b)(2), you must maintain records identifying each scrap provider and documenting the scrap provider's participation in an approved mercury switch removal program. If you purchase motor vehicle scrap from a broker, you must maintain records

identifying each broker and documentation that all scrap provided by the broker was obtained from other scrap providers who participate in an approved mercury switch removal program.

(5) Records to document use of binder chemical formulation that does not contain methanol as a specific ingredient of the catalyst formulation for each furfuryl alcohol warm box mold or core making line as required by § 63.10886. These records must be the Material Safety Data Sheet (provided that it contains appropriate information), a certified product data sheet, or a manufacturer's hazardous air pollutant data sheet.

(6) Records of the annual quantity and composition of each HAP-containing chemical binder or coating material used to make molds and cores. These records must be copies of purchasing records, Material Safety Data Sheets, or other documentation that provides information on the binder or coating materials used.

(7) Records of metal melt production for each calendar year.

(f) You must submit semiannual compliance reports to the Administrator according to the requirements in § 63.10(e). The report must clearly identify any deviation from the pollution prevention management practices in §§ 63.10885 or 63.10886 and the corrective action taken.

(g) You must submit a written notification to the Administrator of the initial classification of your facility as a small foundry as required in § 63.10880(f) and (g), as applicable, and for any subsequent reclassification as required in § 63.10881(d)(1) or (e), as applicable.

(h) Following the initial determination for an existing affected source as a small foundry, if the annual metal melt production exceeds 20,000 tons during the preceding year, you must comply with the requirements for large foundries by the applicable dates in § 63.10881(d)(1)(i) or (d)(1)(ii). Following the initial determination for a new affected source as a small foundry, if you increase the annual metal melt capacity to exceed 10,000 tons, you must comply with the requirements for a large foundry by the applicable dates in § 63.10881(e)(1).

(i) You must comply with the following requirements of the General Provisions (40 CFR part 63, subpart A): §§ 63.1 through 63.5; § 63.6(a), (b), (c), and (e)(1); § 63.9; § 63.10(a), (b)(1), (b)(2)(xiv), (b)(3), (d)(1), (d)(4), and (f); and §§ 63.13 through 63.16. Requirements of the General Provisions not cited in the preceding sentence do not apply to the owner or operator of a new or existing affected source that is classified as a small foundry.

Requirements for New and Existing Affected Sources Classified as Large Iron and Steel Foundries

§ 63.10895 What are my standards and management practices?

(a) If you own or operate an affected source that is a large foundry as defined in § 63.10906, you must comply with the pollution prevention management practices in §§ 63.10885 and 63.10886, the requirements in paragraphs (b) through (e) of this section, and the requirements in §§ 63.10896 through 63.10900.

(b) You must operate a capture and collection system for each metal melting furnace at a new or existing iron and steel foundry unless that furnace is specifically uncontrolled as part of an emissions averaging group. Each capture and collection system must meet accepted engineering standards, such as those published by the American Conference of Governmental Industrial Hygienists.

(c) You must not discharge to the atmosphere emissions from any metal melting furnace or group of all metal melting furnaces that exceed the applicable limit in paragraph (c)(1) or (2) of this section. When an alternative emissions limit is provided for a given emissions source, you are not restricted in the selection of which applicable alternative emissions limit is used to demonstrate compliance.

(1) For an existing iron and steel foundry, 0.8 pounds of particulate matter (PM) per ton of metal charged or 0.06 pounds of total metal HAP per ton of metal charged.

(2) For a new iron and steel foundry, 0.1 pounds of PM per ton of metal charged or 0.008 pounds of total metal HAP per ton of metal charged.

(d) If you own or operate a new affected source, you must comply with each control device parameter operating limit in paragraphs (d)(1) and (2) of this section that applies to you.

(1) For each wet scrubber applied to emissions from a metal melting furnace, you must maintain the 3-hour average pressure drop and scrubber water flow rate at or above the minimum levels established during the initial or subsequent performance test.

(2) For each electrostatic precipitator applied to emissions from a metal melting furnace, you must maintain the voltage and secondary current (or total power input) to the control device at or above the level established during the initial or subsequent performance test.

(e) If you own or operate a new or existing iron and steel foundry, you must not discharge to the atmosphere fugitive emissions from foundry operations that exhibit opacity greater than 20 percent (6-minute average), except for one 6-minute average per hour that does not exceed 30 percent.

§ 63.10896 What are my operation and maintenance requirements?

(a) You must prepare and operate at all times according to a written operation and maintenance (O&M) plan for each control device for an emissions source subject to a PM, metal HAP, or opacity emissions limit in § 63.10895. You must maintain a copy of the O&M plan at the facility and make it available for review upon request. At a minimum, each plan must contain the following information:

(1) General facility and contact information;

(2) Positions responsible for inspecting, maintaining, and repairing emissions control devices which are used to comply with this subpart;

(3) Description of items, equipment, and conditions that will be inspected, including an inspection schedule for the items, equipment, and conditions. For baghouses that are equipped with bag leak detection systems, the O&M plan must include the site-specific monitoring plan required in § 63.10897(d)(2).

(4) Identity and estimated quantity of the replacement parts that will be maintained in inventory; and

(5) For a new affected source, procedures for operating and maintaining a CPMS in accordance with manufacturer's specifications.

(b) You may use any other O&M, preventative maintenance, or similar plan which addresses the requirements in paragraph (a)(1) through (5) of this section to demonstrate compliance with the requirements for an O&M plan.

§ 63.10897 What are my monitoring requirements?

(a) You must conduct an initial inspection of each PM control device for a metal melting furnace at an existing affected source. You must conduct each initial 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 operated within 60 days of the compliance date, you must conduct an initial inspection prior to startup of the control device. Following the initial inspections, you must perform periodic inspections and maintenance of each PM control device

for a metal melting furnace at an existing affected source. You must perform the initial and periodic inspections according to the requirements in paragraphs (a)(1) through (4) of this section. You must record the results of each initial and periodic inspection and any maintenance action in the logbook required in § 63.10899(b)(13).

(1) For the initial inspection of each baghouse, you must visually inspect the system ductwork and baghouse units for leaks. You must also inspect the inside of each baghouse for structural integrity and fabric filter condition. Following the initial inspections, you must inspect and maintain each baghouse according to the requirements in paragraphs (a)(1)(i) and (ii) of this section.

(i) You must conduct monthly 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 6 months.

(2) For the initial inspection of each dry electrostatic precipitator, 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 electrostatic housing unit and hopper for leaks and inspect the interior of the electrostatic precipitator to determine the condition and integrity of corona wires, collection plates, hopper, and air diffuser plates. Following the initial inspection, you must inspect and maintain each dry electrostatic precipitator according to the requirements in paragraphs (a)(2)(i) through (iii) of this section.

(i) You must conduct a daily inspection to 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.

(ii) You must conduct monthly visual inspections of the system ductwork, housing unit, and hopper for leaks.

(iii) You must conduct inspections of the interior of the electrostatic precipitator to determine the condition and integrity of corona wires, collection plates, plate rappers, hopper, and air diffuser plates every 24 months.

(3) For the initial inspection of each wet electrostatic precipitator, you must verify the proper functioning of the electronic controls for corona power, that the corona wires are energized, and that water flow is present. You must also visually inspect the system ductwork and electrostatic precipitator housing unit and hopper for leaks and inspect the interior of the electrostatic precipitator to determine the condition and integrity of corona wires, collection plates, plate wash spray heads, hopper, and air diffuser plates. Following the initial inspection, you must inspect and maintain each wet electrostatic precipitator according to the requirements in paragraphs (a)(3)(i) through (iii) of this section.

(i) You must conduct a daily inspection to verify the proper functioning of the electronic controls for corona power, that the corona wires are energized, and that water flow is present.

(ii) You must conduct monthly visual inspections of the system ductwork, electrostatic precipitator housing unit, and hopper for leaks.

(iii) You must conduct inspections of the interior of the electrostatic precipitator to determine the condition and integrity of corona wires, collection plates, plate wash spray heads, hopper, and air diffuser plates every 24 months.

(4) For the initial inspection of each wet scrubber, you must verify the presence of water flow to the scrubber. You must also visually inspect the system ductwork and scrubber unit for leaks and inspect the interior of the scrubber for structural integrity and the condition of the demister and spray nozzle. Following the initial inspection, you must inspect and maintain each wet scrubber according to the requirements in paragraphs (a)(4)(i) through (iii) of this section.

(i) You must conduct a daily inspection to verify the presence of water flow to the scrubber.

(ii) You must conduct monthly visual inspections of the system ductwork and scrubber unit for leaks.

(iii) You must conduct inspections of the interior of the scrubber to determine the structural integrity and condition of the demister and spray nozzle every 12 months.

(b) For each wet scrubber applied to emissions from a metal melting furnace at a new affected source, you must use a continuous parameter monitoring system (CPMS) to measure and record the 3-hour average pressure drop and scrubber water flow rate.

(c) For each electrostatic precipitator applied to emissions from a metal melting furnace at a new affected source, you must measure and record the hourly average voltage and secondary current (or total power input) using a CPMS.

(d) If you own or operate an existing affected source, you may install, operate, and maintain a bag leak detection system for each negative pressure baghouse or positive pressure baghouse as an alternative to the baghouse inspection requirements in paragraph (a)(1) of this section. If you own or operate a new affected source, you must install, operate, and maintain a bag leak detection system for each negative pressure baghouse or positive pressure baghouse. You must install, operate, and maintain each bag leak detection system according to the requirements in paragraphs (d)(1) through (3) of this section.

(1) Each bag leak detection system must meet the requirements in paragraphs (d)(1)(i) through (vii) of this section.

(i) The system must be certified by the manufacturer to be capable of detecting emissions of particulate matter at concentrations of 10 milligrams per actual cubic meter (0.00044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must provide output of relative particulate matter loadings and the owner or operator shall continuously record the output from the bag leak detection system using a strip chart recorder, data logger, or other means.

(iii) The system must be equipped with an alarm that will sound when an increase in relative particulate loadings is detected over the alarm set point established in the operation and maintenance plan, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) The initial adjustment of the system must, at minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points. If the system is equipped with an alarm delay time feature, you also must adjust the alarm delay time.

(v) Following the initial adjustment, do not adjust the sensitivity or range, averaging period, alarm set point, or alarm delay time. Except, once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonable effects including temperature and humidity according to the procedures in the monitoring plan required by paragraph (d)(2) of this section.

(vi) For negative pressure baghouses, induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector sensor must be installed downstream of the baghouse and upstream of any wet scrubber.

(vii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) You must prepare a site-specific monitoring plan for each bag leak detection system to be incorporated in your O&M plan. You must operate and maintain each bag leak detection system according to the plan at all times. Each plan must address all of the items identified in paragraphs (d)(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) Maintenance of the bag leak detection system including a routine maintenance schedule and spare parts inventory list.

(v) How the bag leak detection system output will be recorded and stored.

(vi) Procedures for determining what corrective actions are necessary in the event of a bag leak detection alarm as required in paragraph (d)(3) of this section.

(3) In the event that a bag leak detection system alarm is triggered, you must initiate corrective action to determine the cause of the alarm within 1 hour of the alarm, initiate corrective action to correct the cause of the problem within 24 hours of the alarm, and complete corrective action as soon as practicable, but no later than 10 calendar days from the date of the alarm. You must record the date and time of each valid alarm, the time you initiated corrective action, the correction action taken, and the date on which corrective action was completed. Corrective actions may include, but are not limited to:

(i) Inspecting the bag house for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in 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 baghouse department.

(v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system.

(vi) Shutting down the process producing the particulate emissions.

(e) You must make monthly inspections of the equipment that is important to the performance of the total capture system (i.e., pressure sensors, dampers, and damper switches). This inspection must include observations of the physical appearance of the equipment (e.g., presence of holes in the ductwork or hoods, flow constrictions caused by dents or accumulated dust in the ductwork, and fan erosion). You must repair any defect or deficiency in the capture system as soon as practicable, but no later than 90 days. You must record the date and results of each inspection and the date of repair of any defect or deficiency.

(f) You must install, operate, and maintain each CPMS or other measurement device according to your O&M plan. You must record all information needed to document conformance with these requirements.

(g) In the event of an exceedance of an established emissions limitation (including an operating limit), you must restore operation of the emissions source (including the control device and associated capture system) to its normal or usual manner or operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. The response shall include minimizing the period of any startup, shutdown or malfunction and taking any necessary corrective actions to restore normal operation and prevent the likely recurrence of the exceedance. You must record the date and time correction action was initiated, the correction action taken, and the date corrective action was completed.

(h) If you choose to comply with an emissions limit in § 63.10895(c) using emissions averaging, you must calculate and record for each calendar month the pounds of PM or total metal HAP per ton of metal melted from the group of all metal melting furnaces at your foundry. You must calculate and record the weighted average pounds per ton emissions rate for the group of all metal melting furnaces at the foundry determined from the performance test procedures in § 63.10898(d) and (e).

§ 63.10898 What are my performance test requirements?

(a) You must conduct a performance test to demonstrate initial compliance with the applicable emissions limits for each metal melting furnace or group of all metal melting furnaces that is subject to an emissions limit in § 63.10895(c) and for each building or structure housing foundry operations that is subject to the opacity limit for fugitive emissions in § 63.10895(e). You must conduct the test within 180 days of your compliance date and report the results in your notification of compliance status.

(1) If you own or operate an existing iron and steel foundry, you may choose to submit the results of a prior performance test for PM or total metal HAP that demonstrates compliance with the applicable emissions limit for a metal melting furnace or group of all metal melting furnaces provided the test was conducted within the last 5 years using the methods and procedures specified in this subpart and 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 emissions limit despite such process changes.

(2) If you own or operate an existing iron and steel foundry and you choose to submit the results of a prior performance test according to paragraph (a)(1) of this section, you must submit a written notification to the Administrator of your intent to use the previous test data no later than 60 days after your compliance date. The notification must contain a full copy of the performance test and contain information to demonstrate, if applicable, that either no process changes have been made since the test, or that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite such process changes.

(3) If you have an electric induction furnace equipped with an emissions control device at an existing foundry, you may use the test results from another electric induction furnace to demonstrate compliance with the applicable PM or total metal HAP emissions limit in § 63.10895(c) provided the furnaces are similar with respect to the type of emission control device that is used, the composition of the scrap charged, furnace size, and furnace melting temperature.

(4) If you have an uncontrolled electric induction furnace at an existing foundry, you may use the test results from another electric induction furnace to demonstrate compliance with the applicable PM or total metal HAP emissions limit in § 63.10895(c) provided the test results are prior to any control device and the electric induction furnaces are similar with respect to the composition of the scrap charged, furnace size, and furnace melting temperature.

(5) For electric induction furnaces that do not have emission capture systems, you may install a temporary enclosure for the purpose of representative sampling of emissions. A

permanent enclosure and capture system is not required for the purpose of the performance test.

(b) You must conduct subsequent performance tests to demonstrate compliance with all applicable PM or total metal HAP emissions limits in § 63.10895(c) for a metal melting furnace or group of all metal melting furnaces no less frequently than every 5 years and each time you elect to change an operating limit or make a process change likely to increase HAP emissions.

(c) You must conduct each performance test according to the requirements in § 63.7(e)(1), Table 1 to this subpart, and paragraphs (d) through (g) of this section.

(d) To determine compliance with the applicable PM or total metal HAP emissions limit in § 63.10895(c) for a metal melting furnace in a lb/ton of metal charged 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 rate of PM or total metal HAP, pounds of PM or total metal HAP per ton (lb/ton) of metal charged;

C = Concentration of PM or total metal HAP measured during performance test run, grains per dry standard cubic foot (gr/dscf);

Q = Volumetric flow rate of exhaust gas, dry standard cubic feet per hour (dscf/hr);

T = Total time during a test run that a sample is withdrawn from the stack during melt production cycle, hr;

P = Total amount of metal charged during the test run, tons; and

K = Conversion factor, 7,000 grains per pound.

(e) To determine compliance with the applicable emissions limit in § 63.10895(c) for a group of all metal melting furnaces using emissions averaging,

(1) Determine and record the monthly average charge rate for each metal melting furnace at your iron and steel foundry for the previous calendar month; and

(2) Compute the mass-weighted PM or total metal HAP using Equation 2 of this section.

$$E_c = \frac{\sum_{i=1}^{n} \left(E_{pi} \times T_{ti} \right)}{\sum_{i=1}^{n} T_{ti}} \qquad \text{(Eq. 2)}$$

Where:

E_C = The mass-weighted PM or total metal HAP emissions for the group of all metal melting furnaces at the foundry, pounds of PM or total metal HAP per ton of metal charged;

E_{pi} = Process-weighted mass emissions of PM or total metal HAP for individual emission unit i as determined from the performance test and calculated using Equation 1 of this section, pounds of PM or total metal HAP per ton of metal charged;

T_{ti} = Total tons of metal charged for individual emission unit i for the calendar month prior to the performance test, tons; and

n = The total number of metal melting furnaces at the iron and steel foundry.

(3) For an uncontrolled electric induction furnace that is not equipped with a capture system and has not been previously tested for PM or total metal HAP, you may assume an emissions factor of 2 pounds per ton of PM or 0.13 pounds of total metal HAP per ton of metal melted in Equation 2 of this section instead of a measured test value. If the uncontrolled electric induction furnace is equipped with a capture system, you must use a measured test value.

(f) To determine compliance with the applicable PM or total metal HAP emissions limit for a metal melting furnace in § 63.10895(c) when emissions from one or more regulated furnaces are combined with other non-regulated emissions sources, you may demonstrate compliance using the procedures in paragraphs (f)(1) through (3) of this section.

(1) Determine the PM or total metal HAP process-weighted mass emissions for each of the regulated streams prior to the combination with other exhaust streams or control device.

(2) Measure the flow rate and PM or total metal HAP concentration of the combined exhaust stream both before and after the control device and calculate the mass removal efficiency of the control device using Equation 3 of this section.

$$\%\ \text{reduction} = \frac{E_i - E_o}{E_i} \times 100\% \qquad \text{(Eq. 3)}$$

Where:

E_i = Mass emissions rate of PM or total metal HAP at the control device inlet, lb/hr;

E_o = Mass emissions rate of PM or total metal HAP at the control device outlet, lb/hr.

(3) Meet the applicable emissions limit based on the calculated PM or total metal HAP process-weighted mass emissions for the regulated emissions source using Equation 4 of this section:

$$E_{p1_{released}} E_{p1_i} \times \left(1 - \frac{\%\ \text{reduction}}{100} \right) \qquad \text{(Eq. 4)}$$

Where:

$E_{p1released}$ = Calculated process-weighted mass emissions of PM (or total metal HAP) predicted to be released to the atmosphere from the regulated emissions source, pounds of PM or total metal HAP per ton of metal charged; and

E_{p1i} = Process-weighted mass emissions of PM (or total metal HAP) in the uncontrolled regulated exhaust stream, pounds of PM or total metal HAP per ton of metal charged.

(g) To determine compliance with an emissions limit for situations when multiple sources are controlled by a single control device, but only one source operates at a time or other situations that are not expressly considered in paragraphs (d) through (f) of this section, you must submit a site-specific test plan to the Administrator for approval according to the requirements in § 63.7(c)(2) and (3).

(h) You must conduct each opacity test for fugitive emissions according to the requirements in § 63.6(h)(5) and Table 1 to this subpart.

(i) You must conduct subsequent performance tests to demonstrate compliance with the opacity limit in § 63.10895(e) no less frequently than every 6 months and each time you make

a process change likely to increase fugitive emissions.

(j) In your performance test report, you must certify that the capture system operated normally during the performance test.

(k) You must establish operating limits for a new affected source during the initial performance test according to the requirements in Table 2 of this subpart.

(l) You may change the operating limits for a wet scrubber, electrostatic precipitator, or baghouse if you meet the requirements in paragraphs (l)(1) through (3) of this section.

(1) Submit a written notification to the Administrator of your plan to conduct a new performance test to revise the operating limit.

(2) Conduct a performance test to demonstrate compliance with the applicable emissions limitation in § 63.10895(c).

(3) Establish revised operating limits according to the applicable procedures in Table 2 to this subpart.

§ 63.10899 What are my recordkeeping and reporting requirements?

(a) As required by § 63.10(b)(1), you must maintain files of all information (including all reports and notifications) for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. At a minimum, the most recent 2 years of data shall be retained on site. The remaining 3 years of data may be retained off site. Such files may be maintained on microfilm, on a computer, on computer floppy disks, on magnetic tape disks, or on microfiche.

(b) In addition to the records required by 40 CFR 63.10, you must keep records of the information specified in paragraphs (b)(1) through (13) of this section.

(1) You must keep records of your written materials specifications according to § 63.10885(a) and records that demonstrate compliance with the requirements for restricted metallic scrap in § 63.10885(a)(1) and/or for the use of general scrap in § 63.10885(a)(2) and for mercury in § 63.10885(b)(1) through (3), as applicable. You must keep records documenting compliance with § 63.10885(b)(4) for scrap that does not contain motor vehicle scrap.

(2) If you are subject to the requirements for a site-specific plan for mercury under § 63.10885(b)(1), 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 a certification that the recovered mercury switches were recycled at RCRA-permitted facilities. The semiannual reports must include a certification that you have conducted periodic inspections or taken other means of corroboration as required under § 63.10885(b)(1)(ii)(C). You must identify which option in § 63.10885(b) applies to each scrap provider, contract, or shipment. You may include this information in the semiannual compliance reports required under paragraph (c) of this section.

(3) If you are subject to the option for approved mercury programs under § 63.10885(b)(2), you must maintain records identifying each scrap provider and documenting the scrap provider's participation in an approved mercury switch removal program. If your scrap provider is a broker, you must maintain records identifying each of the broker's scrap suppliers and documenting the scrap supplier's participation in an approved mercury switch removal program.

(4) You must keep records to document use of any binder chemical formulation that does not contain methanol as a specific ingredient of the catalyst formulation for each furfuryl alcohol warm box mold or core making line as required by § 63.10886. These records must be the Material Safety Data Sheet (provided that it contains appropriate information), a certified product data sheet, or a manufacturer's hazardous air pollutant data sheet.

(5) You must keep records of the annual quantity and composition of each HAP-containing chemical binder or coating material used to make molds and cores. These records must be copies of purchasing records, Material Safety Data Sheets, or other documentation that provide information on the binder or coating materials used.

(6) You must keep records of monthly metal melt production for each calendar year.

(7) You must keep a copy of the operation and maintenance plan as required by § 63.10896(a) and records that demonstrate compliance with plan requirements.

(8) If you use emissions averaging, you must keep records of the monthly metal melting rate for each furnace at your iron and steel foundry, and records of the calculated pounds of PM or total metal HAP per ton of metal melted for the group of all metal melting furnaces required by § 63.10897(h).

(9) If applicable, you must keep records for bag leak detection systems as follows:

(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, and for each valid alarm, the time you initiated corrective action, the corrective action taken, and the date on which corrective action was completed.

(10) You must keep records of capture system inspections and repairs as required by § 63.10897(e).

(11) You must keep records demonstrating conformance with your specifications for the operation of CPMS as required by § 63.10897(f).

(12) You must keep records of corrective action(s) for exceedances and excursions as required by § 63.10897(g).

(13) You must record the results of each inspection and maintenance required by § 63.10897(a) for PM control devices in a logbook (written or electronic format). You must keep the logbook onsite and make the logbook available to the Administrator upon request. You must keep records of the information specified in paragraphs (b)(13)(i) through (iii) of this section.

(i) The date and time of each recorded action for a fabric filter, the results of each inspection, and the results of any maintenance performed on the bag filters.

(ii) The date and time of each recorded action for a wet or dry electrostatic precipitator (including ductwork), the results of each inspection, and the results of any maintenance performed for the electrostatic precipitator.

(iii) The date and time of each recorded action for a wet scrubber (including ductwork), the results of each inspection, and the results of any maintenance performed on the wet scrubber.

(c) You must submit semiannual compliance reports to the Administrator according to the requirements in § 63.10(e). The reports must include, at a minimum, the following information as applicable:

(1) Summary information on the number, duration, and cause (including unknown cause, if applicable) of excursions or exceedances, as

applicable, and the corrective action 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 calibration checks, if applicable); and

(3) Summary information on any deviation from the pollution prevention management practices in §§ 63.10885 and 63.10886 and the operation and maintenance requirements § 63.10896 and the corrective action taken.

(d) You must submit written notification to the Administrator of the initial classification of your new or existing affected source as a large iron and steel facility as required in § 63.10880(f) and (g), as applicable, and for any subsequent reclassification as required in § 63.10881(d) or (e), as applicable.

§ 63.10900 What parts of the General Provisions apply to my large foundry?

(a) If you own or operate a new or existing affected source that is classified as a large foundry, you must comply with the requirements of the General Provisions (40 CFR part 63, subpart A) according to Table 3 of this subpart.

(b) If you own or operator a new or existing affected source that is classified as a large foundry, your notification of compliance status required by § 63.9(h) must include each applicable certification of compliance, signed by a responsible official, in Table 4 of this subpart.

Other Requirements and Information

§ 63.10905 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by EPA or a delegated authority such as your State, local, or tribal agency. If the 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 EPA Regional Office to find out if implementation and enforcement of 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 EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (6) of this section.

(1) Approval of an alternative non-opacity emissions standard under 40 CFR 63.6(g).

(2) Approval of an alternative opacity emissions standard under § 63.6(h)(9).

(3) 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 § 63.90.

(4) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' under is defined in § 63.90.

(5) Approval of a major change to recordkeeping and reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

(6) Approval of a local, State, or national mercury switch removal program under § 63.10885(b)(2).

§ 63.10906 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.

Annual metal melt capacity means the lower of the total metal melting furnace equipment melt rate capacity assuming 8,760 operating hours per year summed for all metal melting furnaces at the foundry or, if applicable, the maximum permitted metal melt production rate for the iron and steel foundry calculated on an annual basis. Unless otherwise specified in the permit, permitted metal melt production rates that are not specified on an annual basis must be annualized assuming 24 hours per day, 365 days per year of operation. If the permit limits the operating hours of the furnace(s) or foundry, then the permitted operating hours are used to annualize the maximum permitted metal melt production rate.

Annual metal melt production means the quantity of metal melted in a metal melting furnace or group of all metal melting furnaces at the iron and steel foundry in a given calendar year. For the purposes of this subpart, metal melt production is determined on the basis on the quantity of metal charged to each metal melting furnace; the sum of the metal melt production for each furnace in a given calendar year is the annual metal melt production of the foundry.

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, electrodynamic, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

Binder chemical means a component of a system of chemicals used to bind sand together into molds, mold sections, and cores through chemical reaction as opposed to pressure.

Capture system means the collection of components used to capture gases and fumes released from one or more emissions points and then convey the captured gas stream to a control device or to the atmosphere. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: Duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.

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 a metal melting furnace.

Cupola means a vertical cylindrical shaft furnace that uses coke and forms of iron and steel such as scrap and foundry returns as the primary charge components and melts the iron and steel through combustion of the coke by a forced upward flow of heated air.

Deviation means any instance in which an affected source or an owner or operator of such an affected source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emissions limitation (including operating limits), management practice, or operation and maintenance requirement;

(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 iron and steel foundry required to obtain such a permit; or

(3) Fails to meet any emissions limitation (including operating limits) or management standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Electric arc furnace means a vessel in which forms of iron and steel such as scrap and foundry returns are melted through resistance heating by an electric current flowing through the arcs formed between the electrodes and the surface of the metal and also flowing through the metal between the arc paths.

Electric induction furnace means a vessel in which forms of iron and steel

such as scrap and foundry returns are melted though resistance heating by an electric current that is induced in the metal by passing an alternating current through a coil surrounding the metal charge or surrounding a pool of molten metal at the bottom of the vessel.

Exhaust stream means gases emitted from a process through a conveyance as defined in this subpart.

Foundry operations mean all process equipment and practices used to produce metal castings for shipment. *Foundry operations* include: Mold or core making and coating; scrap handling and preheating; metal melting and inoculation; pouring, cooling, and shakeout; shotblasting, grinding, and other metal finishing operations; and sand handling.

Free liquids means material that fails the paint filter liquids test by EPA Method 9095B, Revision 2, November 1994 (incorporated by reference—see § 63.14). That is, if any portion of the material passes through and drops from the filter within the 5-minute test period, the material contains *free liquids*.

Fugitive emissions means any pollutant released to the atmosphere that is not discharged through a system of equipment that is specifically designed to capture pollutants at the source, convey them through ductwork, and exhaust them using forced ventilation. *Fugitive emissions* include pollutants released to the atmosphere through windows, doors, vents, or other building openings. *Fugitive emissions* also include pollutants released to the atmosphere through other general building ventilation or exhaust systems not specifically designed to capture pollutants at the source.

Furfuryl alcohol warm box mold or core making line means a mold or core making line in which the binder chemical system used is that system commonly designated as a furfuryl alcohol warm box system by the foundry industry.

Iron and steel foundry means a facility or portion of a facility that melts scrap, ingot, and/or other forms of iron and/or steel and pours the resulting molten metal into molds to produce final or near final shape products for introduction into commerce. Research and development facilities, operations that only produce non-commercial castings, and operations associated with nonferrous metal production are not included in this definition.

Large foundry means, for an existing affected source, an iron and steel foundry with an annual metal melt production greater than 20,000 tons. For a new affected source, *large foundry* means an iron and steel foundry with an annual metal melt capacity greater than 10,000 tons.

Mercury switch means each mercury-containing capsule or switch assembly that is part of a convenience light switch mechanism installed in a vehicle.

Metal charged means the quantity of scrap metal, pig iron, metal returns, alloy materials, and other solid forms of iron and steel placed into a metal melting furnace. Metal charged does not include the quantity of fluxing agents or, in the case of a cupola, the quantity of coke that is placed into the metal melting furnace.

Metal melting furnace means a cupola, electric arc furnace, electric induction furnace, or similar device that converts scrap, foundry returns, and/or other solid forms of iron and/or steel to a liquid state. This definition does not include a holding furnace, an argon oxygen decarburization vessel, or ladle that receives molten metal from a metal melting furnace, to which metal ingots or other material may be added to adjust the metal chemistry.

Mold or core making line means the collection of equipment that is used to mix an aggregate of sand and binder chemicals, form the aggregate into final shape, and harden the formed aggregate. This definition does not include a line for making greensand molds or cores.

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.

Nonferrous metal means any pure metal other than iron or any metal alloy for which an element other than iron is its major constituent in percent by weight.

On blast means those periods of cupola operation when combustion (blast) air is introduced to the cupola furnace and the furnace is capable of producing molten metal. On blast conditions are characterized by both blast air introduction and molten metal production.

Responsible official means responsible official as defined in § 63.2.

Scrap preheater means a vessel or other piece of equipment in which metal scrap that is to be used as melting furnace feed is heated to a temperature high enough to eliminate volatile impurities or other tramp materials by direct flame heating or similar means of heating. Scrap dryers, which solely remove moisture from metal scrap, are not considered to be scrap preheaters for purposes of this subpart.

Scrap provider means the person (including a broker) who contracts directly with an iron and steel foundry to provide motor vehicle scrap. Scrap processors such as shredder operators or vehicle dismantlers that do not sell scrap directly to a foundry are not *scrap providers*.

Scrubber blowdown means liquor or slurry discharged from a wet scrubber that is either removed as a waste stream or processed to remove impurities or adjust its composition or pH.

Small foundry means, for an existing affected source, an iron and steel foundry that has an annual metal melt production of 20,000 tons or less. For a new affected source, *small foundry* means an iron and steel foundry that has an annual metal melt capacity of 10,000 tons or less.

Total metal HAP means, for the purposes of this subpart, the sum of the concentrations of compounds of antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, nickel, and selenium as measured by EPA Method 29 (40 CFR part 60, appendix A–8). Only the measured concentration of the listed analytes that are present at concentrations exceeding one-half the quantitation limit of the analytical method are to be used in the sum. If any of the analytes are not detected or are detected at concentrations less than one-half the quantitation limit of the analytical method, the concentration of those analytes will be assumed to be zero for the purposes of calculating the total metal HAP for this subpart.

Tables to Subpart ZZZZZ of Part 63

TABLE 1 TO SUBPART ZZZZZ OF PART 63.—PERFORMANCE TEST REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES CLASSIFIED AS LARGE FOUNDRIES

[As required in § 63.10898(c) and (h), you must conduct performance tests according to the test methods and procedures in the following table]

For. . .	You must. . .	According to the following requirements. . .
1. Each metal melting furnace subject to a PM or total metal HAP limit in § 63.10895(c).	a. Select sampling port locations and the number of traverse points in each stack or duct using EPA Method 1 or 1A (40 CFR part 60, appendix A). b. Determine volumetric flow rate of the stack gas using Method 2, 2A, 2C, 2D, 2F, or 2G (40 CFR part 60, appendix A). c. Determine dry molecular weight of the stack gas using EPA Method 3, 3A, or 3B (40 CFR part 60, appendix A).[1]. d. Measure moisture content of the stack gas using EPA Method 4 (40 CFR part 60, appendix A). e. Determine PM concentration using EPA Method 5, 5B, 5D, 5F, or 5I, as applicable or total metal HAP concentration using EPA Method 29 (40 CFR part 60, appendix A).	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. i. Collect a minimum sample volume of 60 dscf of gas during each PM sampling run. The PM concentration is determined using only the front-half (probe rinse and filter) of the PM catch. ii. For Method 29, only the measured concentration of the listed metal HAP analytes that are present at concentrations exceeding one-half the quantification limit of the analytical method are to be used in the sum. If any of the analytes are not detected or are detected at concentrations less than one-half the quantification limit of the analytical method, the concentration of those analytes is assumed to be zero for the purposes of calculating the total metal HAP. iii. A minimum of three valid test runs are needed to comprise a PM or total metal HAP performance test. iv. For cupola metal melting furnaces, sample PM or total metal HAP only during times when the cupola is on blast. v. For electric arc and electric induction metal melting furnaces, sample PM or total metal HAP only during normal melt production conditions, which may include, but are not limited to the following operations: Charging, melting, alloying, refining, slagging, and tapping. vi. Determine and record the total combined weight of tons of metal charged during the duration of each test run. You must compute the process-weighted mass emissions of PM according to Equation 1 of § 63.10898(d) for an individual furnace or Equation 2 of § 63.10898(e) for the group of all metal melting furnaces at the foundry.
2. Fugitive emissions from buildings or structures housing any iron and steel foundry emissions sources subject to opacity limit in § 63.10895(e).	a. Using a certified observer, conduct each opacity test according to EPA Method 9 (40 CFR part 60, appendix A–4) and 40 CFR 63.6(h)(5).	i. The certified observer may identify a limited number of openings or vents that appear to have the highest opacities and perform opacity observations on the identified openings or vents in lieu of performing observations for each opening or vent from the building or structure. Alternatively, a single opacity observation for the entire building or structure may be performed, if the fugitive release points afford such an observation. ii. During testing intervals when PM or total metal HAP performance tests, if applicable, are being conducted, conduct the opacity test such that the opacity observations are recorded during the PM or total metal HAP performance tests.

TABLE 1 TO SUBPART ZZZZZ OF PART 63.—PERFORMANCE TEST REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES CLASSIFIED AS LARGE FOUNDRIES—Continued

[As required in § 63.10898(c) and (h), you must conduct performance tests according to the test methods and procedures in the following table]

For. . .	You must. . .	According to the following requirements. . .
	b. As alternative to Method 9 performance test, conduct visible emissions test by Method 22 (40 CFR part 60, appendix A–7). The test is successful if no visible emissions are observed for 90 percent of the readings over 1 hour. If VE is observed greater than 10 percent of the time over 1 hour, then the facility must conduct another performance test as soon as possible, but no later than 15 calendar days after the Method 22 test, using Method 9 (40 CFR part 60, appendix A–4).	i. The observer may identify a limited number of openings or vents that appear to have the highest visible emissions and perform observations on the identified openings or vents in lieu of performing observations for each opening or vent from the building or structure. Alternatively, a single observation for the entire building or structure may be performed, if the fugitive release points afford such an observation. ii. During testing intervals when PM or total metal HAP performance tests, if applicable, are being conducted, conduct the visible emissions test such that the observations are recorded during the PM or total metal HAP performance tests.

[1] You may also use as an alternative to EPA Method 3B (40 CFR part 60, appendix A), the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas, ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses'' (incorporated by reference—see § 63.14).

TABLE 2 TO SUBPART ZZZZZ OF PART 63.—PROCEDURES FOR ESTABLISHING OPERATING LIMITS FOR NEW AFFECTED SOURCES CLASSIFIED AS LARGE FOUNDRIES

[As required in § 63.10898(k), you must establish operating limits using the procedures in the following table]

For . . .	You must . . .
1. Each wet scrubber subject to the operating limits in § 63.10895(d)(1) for pressure drop and scrubber water flow rate.	Using the CPMS required in § 63.10897(b), measure and record the pressure drop and scrubber water flow rate in intervals of no more than 15 minutes during each PM or total metal HAP test run. Compute and record the average pressure drop and average scrubber water flow rate for all the valid sampling runs in which the applicable emissions limit is met.
2. Each electrostatic precipitator subject to operating limits in § 63.10895(d)(2) for voltage and secondary current (or total power input).	Using the CPMS required in § 63.10897(c), measure and record voltage and secondary current (or total power input) in intervals of no more than 15 minutes during each PM or total metal HAP test run. Compute and record the minimum hourly average voltage and secondary current (or total power input) from all the readings for each valid sampling run in which the applicable emissions limit is met.

TABLE 3 TO SUBPART ZZZZZ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO NEW AND EXISTING AFFECTED SOURCES CLASSIFIED AS LARGE FOUNDRIES

[As required in § 63.10900(a), you must meet each requirement in the following table that applies to you.]

Citation	Subject	Applies to large foundry?	Explanation
63.1	Applicability	Yes.	
63.2	Definitions	Yes.	
63.3	Units and abbreviations	Yes.	
63.4	Prohibited activities	Yes.	
63.5	Construction/reconstruction	Yes.	
63.6(a)–(g)	Compliance with standards and maintenance requirements.	Yes.	
63.6(h)	Opacity and visible emissions standards	Yes.	
63.6(i)(i)–(j)	Compliance extension and Presidential compliance exemption.	Yes.	
63.7(a)(3), (b)–(h)	Performance testing requirements	Yes.	
63.7(a)(1)–(a)(2)	Applicability and performance test dates	No	Subpart ZZZZZ specifies applicability and performance test dates.
63.8(a)(1)–(a)(3), (b), (c)(1)–(c)(3), (c)(6)–(c)(8), (d), (e), (f)(1)–(f)(6), (g)(1)–(g)(4).	Monitoring requirements	Yes.	
63.8(a)(4)	Additional monitoring requirements for control devices in § 63.11.	No.	
63.8(c)(4)	Continuous monitoring system (CMS) requirements.	No.	
63.8(c)(5)	Continuous opacity monitoring system (COMS) minimum procedures.	No.	
63.8(g)(5)	Data reduction	No.	

TABLE 3 TO SUBPART ZZZZZ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO NEW AND EXISTING AFFECTED SOURCES CLASSIFIED AS LARGE FOUNDRIES—Continued

[As required in § 63.10900(a), you must meet each requirement in the following table that applies to you.]

Citation	Subject	Applies to large foundry?	Explanation
63.9	Notification requirements	Yes.	
63.10(a), (b)(1)–(b)(2)(xii) –(b)(2)(xiv), (b)(3), (d)(1)–(2), (e)(1)–(2), (f).	Recordkeeping and reporting requirements.	Yes.	
63.10(c)(1)–(6), (c)(9)–(15)	Additional records for continuous monitoring systems.	No.	
63.10(c)(7)–(8)	Records of excess emissions and parameter monitoring exceedances for CMS.	Yes.	
63.10(d)(3)	Reporting opacity or visible emissions observations.	Yes.	
63.10(e)(3)	Excess emissions reports	Yes.	
63.10(e)(4)	Reporting COMS data	No.	
63.11	Control device requirements	No.	
63.12	State authority and delegations	Yes.	
63.13–63.16	Addresses of State air pollution control agencies and EPA regional offices. Incorporation by reference. Availability of information and confidentiality. Performance track provisions.	Yes.	

TABLE 4 TO SUBPART ZZZZZ OF PART 63.—COMPLIANCE CERTIFICATIONS FOR NEW AND EXISTING AFFECTED SOURCES CLASSIFIED AS LARGE IRON AND STEEL FOUNDRIES

[As required by § 63.10900(b), your notification of compliance status must include certifications of compliance according to the following table.]

For. . .	Your notification of compliance status required by § 63.9(h) must include this certification of compliance, signed by a responsible official:
Each new or existing affected source classified as a large foundry and subject to scrap management requirements in § 63.10885(a)(1) and/or (2).	''This facility has prepared, and will operate by, written material specifications for metallic scrap according to § 63.10885(a)(1)'' and/or ''This facility has prepared, and will operate by, written material specifications for general iron and steel scrap according to § 63.10885(a)(2).''
Each new or existing affected source classified as a large foundry and subject to mercury switch removal requirements in § 63.10885(b).	''This facility has prepared, and will operate by, written material specifications for the removal of mercury switches and a site-specific plan implementing the material specifications according to § 63.10885(b)(1)'' and/or ''This facility participates in and purchases motor vehicles scrap only from scrap providers who participate in a program for removal of mercury switches that has been approved by the EPA Administrator according to § 63.10885(b)(2) and have prepared a plan for participation in the EPA approved program according to § 63.10885(b)(2)(iv)'' and/or ''The only materials from motor vehicles in the scrap charged to a metal melting furnace at this facility are materials recovered for their specialty alloy content in accordance with § 63.10885(b)(3) which are not reasonably expected to contain mercury switches'' and/or ''This facility complies with the requirements for scrap that does not contain motor vehicle scrap in accordance with § 63.10885(b)(4).''
Each new or existing affected source classified as a large foundry and subject to § 63.10886.	''This facility complies with the no methanol requirement for the catalyst portion of each binder chemical formulation for a furfuryl alcohol warm box mold or core making line according to § 63.10886.''
Each new or existing affected source classified as a large foundry and subject to § 63.10895(b).	''This facility operates a capture and collection system for each emissions source subject to this subpart according to § 63.10895(b).''
Each existing affected source classified as a large foundry and subject to § 63.10895(c)(1).	''This facility complies with the PM or total metal HAP emissions limit in § 63.10895(c) for each metal melting furnace or group of all metal melting furnaces based on a previous performance test in accordance with § 63.10898(a)(1).''
Each new or existing affected source classified as a large foundry and subject to § 63.10896(a).	''This facility has prepared and will operate by an operation and maintenance plan according to § 63.10896(a).''
Each new or existing (if applicable) affected source classified as a large foundry and subject to § 63.10897(d).	''This facility has prepared and will operate by a site-specific monitoring plan for each bag leak detection system and submitted the plan to the Administrator for approval according to § 63.10897(d)(2).''

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Part III

Department of Transportation

Federal Highway Administration

23 CFR Parts 634 and 655

National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Revision; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 634 and 655

[FHWA Docket No. FHWA–2007–28977]

RIN 2125–AF22

National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Revision

AGENCY: Federal Highway Administration (FHWA), (DOT).

ACTION: Notice of proposed amendments.

SUMMARY: The MUTCD (also referred to as ''the Manual'') is incorporated by our regulations, approved by the Federal Highway Administration, and recognized as the national standard for traffic control devices used on all public roads. The purpose of this notice of proposed amendments is to revise standards, guidance, options, and supporting information relating to the traffic control devices in all parts of the MUTCD. The proposed changes are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application. These proposed changes are being designated as the next edition of the MUTCD.

DATES: Comments must be received on or before July 31, 2008.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit electronically at *www.regulations.gov* or fax comments to (202) 493–2251. 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 may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Page 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Hari Kalla, Office of Transportation Operations, (202) 366–5915; or Raymond Cuprill, Office of the Chief Counsel (202) 366–0791, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. Office hours 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 Federal eRulemaking portal at: *www.regulations.gov*. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. 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 from the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

The text, figures, and tables of a proposed new edition of the MUTCD incorporating proposed changes from the current edition are available for inspection and copying, as prescribed in 49 CFR Part 7, at the FHWA Office of Transportation Operations (HOTO–1), 1200 New Jersey Avenue, SE., Washington, DC 20590. Furthermore, the text, figures, and tables of a proposed new edition of the MUTCD incorporating proposed changes from the current edition are available on the MUTCD Internet Web site *http://mutcd.fhwa.dot.gov.* The proposed text is available in two formats. The first format shows the current MUTCD text with proposed additions in blue underlined text and proposed deletions as red strikeout text, and also includes notes in green boxes to provide helpful explanations where text is proposed to be relocated or where minor edits are proposed. The second format shows a ''clean'' version of the complete text proposed for the next edition of the MUTCD, with all the proposed changes incorporated. The complete current 2003 edition of the MUTCD with Revision No. 1 incorporated is also available on the same Internet Web site.

This notice of proposed amendments is being issued to provide an opportunity for public comment on the desirability of these proposed amendments to the MUTCD. Based on the comments received and its own experience, the FHWA may issue a Final Rule concerning the proposed changes included in this notice.

The notice of proposed amendments is being published to address the many advances in technology, research results, and improved traffic and safety management strategies that have occurred since the 2002 initiation of the rulemaking process that led to the 2003 edition of the MUTCD. The FHWA invites comments on these proposed changes to the MUTCD. The FHWA requests that commenters cite the page number and line numbers of the proposed MUTCD text for which each specific comment to the docket about the proposed text is concerned, to help make the FHWA's docket comment review process more efficient.

A summary of the significant proposed general changes and proposed changes for each of the parts of the MUTCD is included in the following discussion.

Discussion of Proposed General Amendments to the MUTCD

1. The FHWA proposes to develop a new cover page for the new edition of the MUTCD that will maintain general consistency with covers of previous editions but with changes to give it a distinctive appearance, to minimize the possibility of confusion by users. Although a new cover page has not yet been developed and is not illustrated in the NPA, the FHWA proposes to include a new cover page design in the edition of the MUTCD published as the Final Rule. The FHWA proposes that the date of the new edition to be identified on the cover and elsewhere within the document will be the year in which the Final Rule is issued.

2. The FHWA proposes to include paragraph numbers for each section, in the margins, for the final page images of the next edition of the MUTCD. Although the page images shown for the NPA do not include paragraph numbers, the FHWA proposes to include them in the edition of the MUTCD published as the Final Rule in order to aid practitioners in referencing the MUTCD, as well as to assist readers of future MUTCD notices of proposed amendments. On the FHWA's MUTCD Web site at *http://mutcd.fhwa.dot.gov*, along with the proposed MUTCD text, the FHWA has posted sample pages showing four possible methods for paragraph numbering. Interested persons should review the sample pages and provide comments to the docket on the paragraph numbering options.

3. Throughout the MUTCD, the FHWA proposes minor changes in text

and figures for grammatical or style consistency, to improve consistency with related text or figures, to improve clarity, or to correct minor errors. Where the FHWA proposes to add a new chapter within a part of the MUTCD, a new section within a chapter of the MUTCD, or a new item within a listing, the chapters or sections or items that follow the proposed addition would be renumbered or relettered accordingly. All Tables of Contents, Lists of Figures, Lists of Tables, and page headers and footers would be revised as appropriate to reflect the proposed changes.

4. The FHWA proposes, where appropriate, to modify figures and tables to reflect proposed changes in the text and to add figures and tables to illustrate new or revised text.

5. In various sections of the Manual, the FHWA proposes to relocate statements or paragraphs in order to place subject material together in logical order, to provide continuity, or to improve flow. In addition, the FHWA proposes to change the titles of some sections in order to more accurately describe the content of the section.

6. The FHWA proposes to remove the phrase ''reasonably safe'' throughout the Manual, because it cannot be easily defined, and as a result it is open to too much subjective interpretation. The FHWA proposes that each occurrence of the term either be eliminated or replaced with suitable language that is more appropriate.

7. The FHWA proposes to change the phrase ''bicycle trail'' to ''bikeway'' in several places in the Manual. The FHWA proposes this change because the term ''bikeway'' is a generic term used for any road, street, or shared-use path that is specifically designated for bicycle travel and the term ''bicycle trail'' is generally used to designate only off-road trails or paths that are typically not constructed to engineering standards or guidelines, and the application of the MUTCD to such bicycle trails would generally be impractical, inappropriate, and inadvisable in some locations.

8. The FHWA proposes to change the references to the book previously titled ''Standard Highway Signs'' to refer to the current ''Standard Highway Signs and Markings.'' This change is proposed throughout the MUTCD because the FHWA is changing the title of that book to more accurately reflect its content, which includes information regarding markings.

9. The FHWA has conducted a comprehensive review of all of the sign codes used throughout the Manual, and proposes to revise sign codes in several places in order to provide more consistency and clarity. As part of this process, the FHWA proposes to revise the term ''sign code'' to ''sign designation'' to avoid confusion with other uses of the word ''code,'' and to use the ''a'' suffix in sign designations for word message signs that are alternatives to symbol signs, use the ''P'' suffix for sign designations for plaques, and add ''(M)'' suffixes for signs that have metric units.

10. In all Parts of the MUTCD where sign images are shown in the figures, the FHWA proposes to add sign images that are already in the Standard Highway Signs and Markings book, but not in the MUTCD, and to update figures to show proposed new signs or changes to existing signs.

11. The FHWA proposes to add information in the MUTCD regarding toll plaza applications, because toll facilities are becoming more common and there is a need to provide more consistent use of signing, signals, and markings in advance of and at toll plazas, in order to enhance safety and convenience for road users. The FHWA proposes to add provisions on toll plaza traffic control devices to Parts 2, 3, and 4 that reflect the results of research study on best practices for traffic control strategies at toll plazas [1] (referred to hereafter as the ''Toll Plaza Best Practices and Recommendations Report'') and FHWA's policy on toll plaza traffic control devices.[2]

12. The FHWA proposes to expand the provisions regarding preferential lanes and add new provisions regarding managed lanes in various Parts of the MUTCD. This proposed information is contained primarily in Parts 2 and 3, and is intended to address specific signing and marking issues associated with electronic toll collection, High Occupancy Toll (HOT) lanes, variable tolls, etc. In addition, the FHWA proposes to eliminate some information regarding preferential lanes that is too specific for the MUTCD because it deals with highway planning and programmatic matters rather than the traffic control devices for preferential lanes.

13. In order to further address the needs of motorcyclists, the FHWA proposes to add information to Parts 2, 3, and 8 regarding traffic control device considerations for motorcyclists.

14. The FHWA proposes to change the designations of barricades to Types 1, 2, and 3 to eliminate the use of roman numerals because these are the only devices that are designated by roman numerals and to be consistent with other items such as object marker types. This editorial change would affect the text of several Parts of the MUTCD.

Discussion of Proposed Amendments to the Introduction

15. The FHWA proposes to revise the first STANDARD statement regarding the locations where the MUTCD applies. The FHWA proposes this change to incorporate recent changes to 23 CFR 655.603(a) [3] that clarify that, for the purpose of MUTCD applicability, the phrase ''open to public travel'' includes toll roads and roads within shopping centers, parking lots, airports, sports arenas, and other similar business and recreation facilities that are privately owned but where the public is allowed to travel without access restrictions. The FHWA also proposes to modify the wording of 23 CFR 655.603(a) to remove the military base exemption from the MUTCD. The FHWA proposes to apply the provisions in the MUTCD and modify the CFR based on a request from the Military Surface Deployment and Distribution Command to include military bases in order to facilitate motorist safety through conformity and consistency with national standards. The FHWA agrees that many military bases are public and contain public roads that can be freely accessed, and that the use of such roads by military personnel from all over the country makes it especially important for traffic control devices on military bases to be in conformance with the national standards of the MUTCD. As a part of this change, the FHWA proposes to indicate that traffic control devices can be placed by the authority of non-public agencies, and the MUTCD is recognized as the national standard for traffic control devices on public facilities and private property open to public travel, as defined above.

16. In the fourth STANDARD statement, the FHWA proposes to add that substantial conformance of State or other Federal agency MUTCDs or Supplements shall be as defined in 23 CFR 655.603(b)(1), to reflect the

[1] ''State of the Practice and Recommendations on Traffic Control Strategies at Toll Plazas,'' June 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/rpt/tcstoll/index.htm.*

[2] ''Toll Plaza Traffic Control Devices Policy,'' dated September 8, 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/policy/tcstollmemo/tcstoll_policy.htm.*

[3] The Federal Register Notice for the Final Rule, dated December 14, 2006, Vol. 71, No. 240, pages 75111–75115, can be viewed at the following Internet Web site: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2006_register&docid=fr14de06–6.pdf.*

incorporation of the definition of that term into the CFR.[4]

17. In the listing of target phase-in compliance dates, FHWA proposes to include the specific target phase-in compliance date for those items whose dates were determined through previous rulemaking, now that the effective dates are known. In addition, the FHWA proposes target phase-in compliance dates for a number of significant proposed changes in the NPA. The FHWA also proposes to delete from the listing any items for which the target phase-in compliance dates have already passed or will be passed by the date of the publication of the Final Rule resulting from this NPA. It should also be noted that the target phase-in compliance dates define the end of the ''phase-in compliance period'' as discussed for various items in the remainder of this document.

18. Although not specifically shown in the NPA, the FHWA is considering incorporating the phase-in compliance periods into the body of the MUTCD text throughout the applicable parts and sections in the Final Rule. The FHWA is considering this change because the list of phase-in compliance periods is lengthy, and it might be more convenient and effective for practitioners to have phase-in compliance periods embedded in the text, rather than in a different area of the Manual. The FHWA encourages the public to view the Minnesota State Department of Transportation Web site at *http://www.dot.state.mn.us/trafficeng/otepubl/mutcd/index.html* to view how Minnesota has incorporated the phase-in compliance periods into its State MUTCD text and to provide comments to the docket on whether Minnesota's method is preferable to listing all the phase-in compliance periods in the MUTCD Introduction.

Discussion of Proposed Amendments to Part 1—General

19. In Section 1A.03 Design of Traffic Control Devices, the FHWA proposes to delete the STANDARD statement from this section, and place the text in Section 2A.06, because that section more appropriately deals with signs, including their colors and symbols. For the same reason, text in the OPTION statement relating to signs only is also proposed to be relocated to Section 2A.06.

[4] The Federal Register Notice for the Final Rule, dated December 14, 2006, Vol. 71, No. 240, pages 75111–75115, can be viewed at the following Internet Web site: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2006_register&docid=fr14de06–6.pdf.*

20. In Section 1A.08 Authority for Placement of Traffic Control Devices, the FHWA proposes to add to the GUIDANCE statement that signs and other devices (as explained in a proposed new SUPPORT statement) that do not have any traffic control purpose that are placed with the permission of the public agency or official having jurisdiction, should be located where they will not interfere with, or detract from traffic control devices. The FHWA proposes this change to clarify that there are some signs and devices that are placed within the right-of-way for distinct purposes that are not traffic control devices.

21. In Section 1A.10 Interpretations, Experimentations, Changes, and Interim Approvals, the FHWA proposes to revise the 2nd STANDARD statement to indicate that electronic submittals of requests for interpretation, permission to experiment, interim approvals, or changes are preferred. The FHWA proposes to include the e-mail address for such submittals. As part of this proposed change, the FHWA proposes an OPTION statement that includes the postal address for such requests to be mailed to, in the event that the submitter does not have access to e-mail.

The FHWA also proposes to revise and supplement the language regarding interim approvals for the use of traffic control devices in order to provide additional information about the process and reflect how it has evolved since the 2003 MUTCD.

22. In Section 1A.11 Relation to Other Publications, the FHWA proposes to add four FHWA publications and a publication of the American National Standards Institute (ANSI) to the list of publications in the SUPPORT statement. All of these documents are referenced in other Parts of the MUTCD.

In addition, the FHWA proposes to update the list to reflect current editions of the publications.

The FHWA also proposes to delete existing publication 19, the Institute of Transportation Engineers' (ITE) Recommended Practice titled, ''School Trip Safety Program Guidelines'' from the list of publications because ITE has rescinded publication of the reference document and the information from this publication is included within the MUTCD text where appropriate.

23. In Section 1A.12 Color Code, the FHWA proposes to add to the STANDARD statement the assignment of the color purple to indicate facilities or lanes that are allowed to be used only by vehicles equipped with electronic toll collection (ETC) transponders. The FHWA proposes this change to readily identify such facilities or lanes using signs and pavement markings as discussed below in the proposed changes in Parts 2 and 3. Color specifications for signing and marking materials are contained in title 23 of the Code of Federal Regulations, part 655, appendix to subpart F, Tables 1 through 6. The FHWA has reviewed color properties of the purple signing and marking materials available from a variety of manufacturers and proposes to revise the existing daytime color coordinates for purple retroreflective sign material (Table 1), add nighttime color coordinates for purple retroreflective sign material (Table 2), and add daytime and nighttime color coordinates and luminance factors for purple retroreflective marking material (Tables 5, 5A, and 6). The proposed values for purple in the tables are as indicated below (no change is proposed for the existing values for luminance factors for purple as contained in Table 1A):

TABLE 1.—DAYTIME CHROMATICITY COORDINATES FOR PURPLE RETROREFLECTIVE SIGN MATERIAL

x	y
Existing 0.300 Proposed 0.302.	Existing 0.064 Proposed 0.064
Existing 0.320 Proposed 0.307.	Existing 0.200 Proposed 0.202
Existing 0.550 Proposed 0.374.	Existing 0.300 Proposed 0.247
Existing 0.600 Proposed 0.457.	Existing 0.202 Proposed 0.136

TABLE 2.—NIGHTTIME CHROMATICITY COORDINATES FOR PURPLE RETROREFLECTIVE SIGN MATERIAL

x	y
0.300	0.064
0.307	0.150
0.480	0.245
0.530	0.170

TABLE 5.—DAYTIME CHROMATICITY COORDINATES FOR PURPLE RETROREFLECTIVE PAVEMENT MARKING MATERIAL

x	y
0.300	0.064
0.309	0.260
0.362	0.295
0.475	0.144

TABLE 5A.—DAYTIME LUMINANCE FACTORS FOR PURPLE RETROREFLECTIVE PAVEMENT MARKING MATERIAL

Minimum	Maximum
5	15

TABLE 6.—NIGHTTIME CHROMATICITY COORDINATES FOR PURPLE RETROREFLECTIVE PAVEMENT MARKING MATERIAL

x	y
0.338	0.380
0.425	0.365
0.470	0.385
0.635	0.221

24. In Section 1A.13 Definitions of Words and Phrases in This Manual, the FHWA proposes to revise the definitions for: ''bicycle lane,'' ''changeable message sign,'' ''contraflow lane,'' ''crosswalk,'' ''flashing,'' ''highway traffic signal,'' ''intersection,'' ''logo,'' ''occupancy requirement,'' ''public road,'' ''raised pavement marker,'' ''road user,'' ''roundabout,'' ''rumble strip,'' ''sign,'' ''sign legend,'' ''speed,'' ''speed limit,'' ''speed zone,'' ''traffic,'' and ''traffic control device'' to better reflect accepted practice and terminologies and for consistency in the usage of these terms in one or more Parts of the MUTCD.

The FHWA also proposes to add definitions for the words ''alley,'' ''average annual daily traffic,'' ''barrier-separated lane,'' ''bikeway,'' ''buffer-separated lane,'' ''circulatory roadway,'' ''contiguous lane,'' ''electronic toll collection,'' ''flagger,'' ''gate,'' ''highway-light rail transit grade crossing,'' ''hybrid signal,'' ''managed lane,'' ''multi-lane,'' ''open road electronic toll collection,'' ''opposing traffic,'' ''pathway,'' ''pictograph,'' ''preferential lane,'' ''private property open to public travel,'' ''public facility,'' ''safe-positioned,'' ''school,'' ''school zone,'' ''signing,'' ''splitter island,'' ''symbol,'' ''turn bay,'' ''warning light,'' ''worker,'' and ''yield line'' to the list of definitions because they are used in the MUTCD.

25. The FHWA proposes adding a new section following Section 1A.13. The proposed new section is numbered and titled ''Section 1A.14 Meanings of Acronyms and Abbreviations in This Manual,'' and contains a STANDARD statement with 38 acronyms and abbreviations and their definitions. The remaining section in Chapter 1A would be renumbered accordingly. The FHWA proposes adding this new section to assist readers with the acronyms and abbreviations used throughout the Manual.

26. In existing Section 1A.14 (new Section 1A.15) Abbreviations Used on Traffic Control Devices, the FHWA proposes to add to the 1st STANDARD statement a paragraph indicating that the abbreviations listed in Table 1A–2 shall be used only on Portable Changeable Message Signs and that when the word messages shown in Table 1A–2 need to be abbreviated on a Portable Changeable Message sign, the abbreviations shown in Table 1A–2 shall be used. The original research [5] on abbreviations was based on the need to shorten words when used on portable changeable message signs due to the limited number of characters available, unlike fixed-message signs. Many of the abbreviations were developed for words that would not otherwise normally be abbreviated on signs, and the intent was not to abbreviate such words on fixed-message signs.

The FHWA also proposes to add to the 2nd GUIDANCE statement a sentence indicating that punctuation marks or other characters that are not letters or numerals should not be used in abbreviations, unless absolutely necessary to avoid confusion.

27. In Table 1A–1 Acceptable Abbreviations, the FHWA proposes to add several additional abbreviations for various terms that are often used on signs or markings and for which a single abbreviation for each is needed to enhance uniformity. The FHWA also proposes to remove several abbreviations from Table 1A–1 that are symbols rather than abbreviations (such as ''D'' for diesel on general service signs), and to revise several abbreviations based on accepted practice in the specific context of the manner in which fixed messages are developed. The FHWA also proposes to remove from Table 1A–1 some words that should not be abbreviated on static signs or large permanent full-matrix changeable message signs. In concert with these changes to Table 1A–1, the FHWA proposes to revise the title of Table 1A–2 to ''Abbreviations That Shall Only Be Used on Portable Changeable Message Signs'' and add to Table 1A–2 some of the abbreviations that would be removed from Table 1A–1. The FHWA also proposes to revise the content of Table 1A–2 to specifically list the abbreviations (some of which can be used only with a prompt word) that are appropriate only for use on portable changeable message signs (PCMS).

Discussion of Proposed Amendments to Part 2 Signs

Discussion of Proposed Amendments Within Part 2—General

28. In December 2005, the FHWA published a report on the findings of a synthesis of non-MUTCD traffic signing.[6] The purposes of this synthesis (hereafter referred to as the Sign Synthesis Study) were to collect information on special (non-MUTCD) sign legends, designs, and symbols used by the State DOTs and by selected large cities and counties; to identify commonalities, such as what special conditions are the most common reasons for developing a special sign and what design elements have been most commonly used to communicate the message; and to determine the most likely candidate sign legends and symbols for potential inclusion in future editions of the MUTCD and make recommendations for standardized sign designs. The synthesis found that a considerable number and variety of non-MUTCD signs are in routine use by State and local highway agencies in the U.S. In many cases, jurisdictions have used the flexibility given to them by the MUTCD to develop and install special word message signs to communicate unique traffic regulations or warnings of conditions that are not specifically covered in the MUTCD. In some cases the same word message is used by most or all States to describe a particular condition. However, more often there is considerable variety among the States in the specific words or phrases used to communicate the same basic information to road users. Based on the information gathered in the synthesis, the FHWA believes that additional uniformity is needed for the frequently used signing not currently included in the MUTCD and is proposing to add several new signs throughout the MUTCD to provide road users with a uniform message for commonly encountered conditions. In addition to describing these proposed new signs in the MUTCD text, the FHWA proposes to add images of these proposed signs to applicable figures throughout the MUTCD. A brief discussion of each

[5] Report number FHWA/RD–81/039 ''Human Factors Design of Dynamic Displays'' by C. L. Dudek and R. D. Huchingson, Final Report, May 1982, is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Web site *http://www.ntis.gov.*

[6] ''Synthesis of Non-MUTCD Traffic Signing,'' FHWA, December 2005, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

proposed new sign is included in the preamble for each appropriate chapter or section.

In some cases the FHWA is proposing new symbol signs that mirror existing Canadian MUTCD[7] standard symbols that have been in longstanding use in that neighboring country. Such symbols were reviewed as a part of the signing synthesis. Canada has moved considerably farther into symbolization of common regulatory, warning, and guide/information messages (sometimes by adopting European symbols) than has the U.S. The synthesis found several well-designed Canadian symbols with intuitively obvious meanings for sign messages for which some or many States are using a non-MUTCD word message sign (often with many variations among States). The FHWA proposes adopting some of these Canadian symbols or close likenesses, with a temporary educational plaque as needed. The FHWA believes that this will improve the harmony of North American signing in view of the North American Free Trade Agreement (NAFTA) and will enhance the convenience and safety of U.S. and international travelers when driving, riding, or walking.

29. The FHWA proposes to move object markers from Part 3 to Part 2, because there has been confusion regarding the location of object markers in the MUTCD, and the FHWA feels that information regarding object markers is best placed in Part 2. Object markers are typically fabricated from retroreflective sheeting mounted on a substrate and installed on a post and thus are more like a sign than a marking, and most public agencies handle object markers as signs rather than markings.

30. The FHWA proposes to delete the recommendation that signs should only be used where justified by engineering studies or judgment from several places in Part 2. The FHWA proposes this change because it is not the intent of the Manual to make all sign device installations subject to engineering oversight. The FHWA understands that most signs are installed by sign crews authorized to make field decisions that are not necessarily reviewed by engineers or covered by policies prepared by engineers. These proposed revisions recognize the current practice of installing signs throughout the country and do not detract from the requirements that engineering studies must be done under engineering supervision for very specific traffic control decisions. However, at the same time it is not required that an engineer be involved in the decisions for each device at every location.

31. The FHWA proposes to update the existing sign size Tables 2B–1 and 2I–1 (new Table 2K–1) to reflect proposed new signs, deleted signs, and changes to sign sizes. The FHWA proposes to modify Table 2C–2 from its general treatment of warning sign sizes to instead specifically address each sign similarly to the way it is done in Table 2B–1. Additionally, the FHWA proposes to add sign size Tables 2D–1, 2E–1, 2F–1, and 2I–1 to specify the sizes for guide and motorist information signs that have a standardized legend.

In Chapters 2B and 2C, the FHWA proposes to add to the appropriate OPTION statements that the minimum overall sign size may be decreased for signs in alleys with restrictive physical condition and vehicle usage that limits installation of the minimum size sign. The FHWA proposes this change to reflect the results of the FHWA MUTCD Urbanization Needs Survey,[8] which included comments from a number of city traffic engineers that the MUTCD does not adequately address sign sizes and application for alley installations.

32. The FHWA proposes to eliminate the option of all uppercase letters for names of places, streets, and highways, and require that these names be composed of lowercase letters with an initial uppercase letter. The FHWA proposes this change, which affects provisions and figures in various chapters throughout Part 2, based on Older Driver research documented in FHWA reports[9] (referred to hereafter as the ''Older Driver handbook'') that shows significant legibility and recognition distance benefits versus all uppercase letters for destinations. The FHWA proposes a phase-in compliance period of 15 years for existing signs in good condition to minimize any impact on State or local highway agencies.

33. In Chapters 2A and 2E, the FHWA also proposes to discourage the use of punctuation, apostrophes, questions marks or other characters on signs that are not letters or numerals unless absolutely necessary to avoid confusion. The FHWA proposes these changes for consistency with a similar proposed change in Section 1A.14 (new Section 1A.15).

Discussion of Proposed Amendments Within Chapter 2A

34. In Section 2A.01 Function and Purpose of Signs, the FHWA proposes to clarify the definition of ''special purpose road'' in item D of the STANDARD statement by deleting the phrase ''or that provides local access,'' because the existing definition is overly broad. FHWA intends to clarify that neighborhood residential streets are not special-purpose roads and signing for such streets should be the same as that for other conventional roads.

35. In Section 2A.06 Design of Signs, the FHWA proposes to relocate a STANDARD paragraph regarding symbols on signs, and its associated OPTION paragraph, from Section 1A.03 to this section. The FHWA proposes this change because Section 2A.06 is the most likely place for a reader to look for information regarding sign design.

In addition, the FHWA proposes to add information regarding the use of e-mail addresses to the last STANDARD and OPTION statements. The use of e-mail addresses on signs is to be the same as Internet Web site addresses. E-mail addresses are just as difficult to read and remember as Internet Web site addresses and constitute the same issues for a driver traveling at highway speeds. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

36. The FHWA proposes to relocate the information in existing Section 2A.07 to proposed new Chapter 2M in order to consolidate all information on changeable message signs into one chapter. The FHWA would renumber the remaining sections accordingly.

37. In existing Section 2A.08 (new Section 2A.07) Retroreflectivity and Illumination, the FHWA proposes to revise the GUIDANCE statement to clarify that overhead sign installations on freeways and expressways should be illuminated unless an engineering study shows that retroreflection will perform effectively without illumination, and that overhead sign installations on conventional or special purpose roads

[7] The Manual of Uniform Traffic Control Devices for Canada, 4th Edition, is available for purchase from the Transportation Association of Canada, 2323 St. Laurent Boulevard, Ottawa, Ontario K1G 4J8 Canada, Web site *http://www.tac-atc.ca*.

[8] ''Urbanizing the MUTCD,'' by W. Scott Wainwright, 2003, paper no. CB03C184, Compendium of Papers for the 2003 Institute of Transportation Engineers Technical Conference, is available from the Institute of Transportation Engineers (Web site: *http://www.ite.org).* A presentation based on the paper can be viewed at the following Internet Web site: *http://tcd.tamu.edu/Documents/FHWA/MUTCD_Urbanization.ppt.*

[9] ''Highway Design Handbook for Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–103, May, 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01103/coverfront.htm.* Also see Recommendation II.A(2) in ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May, 2001, which can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.*

should be illuminated unless engineering judgment indicates that retroreflection will perform effectively without illumination. The FHWA proposes this change because the current language implies that written documentation (engineering study) is mandatory for the practitioner to decide that illumination is not needed for signs on conventional roads. The FHWA believes that such documentation is not necessary and therefore the FHWA proposes to recommend that engineering judgment be used rather than require an engineering study. Overhead sign installations such as street name signs, lane use signs, and other smaller sign installations on conventional roads generally would not warrant overhead lighting and may be impractical for structural reasons. Many overhead sign installations on conventional roads are on monotube structures that are not designed to support overhead lighting.

The FHWA also proposes to add a paragraph to the last STANDARD statement to prohibit the use of individual LED pixels and groups of LEDs within the background area of a sign, except for the STOP/SLOW paddles used by flaggers and the STOP paddles used by adult crossing guards. The FHWA's intent is to clarify that LEDs are to be used only in the border or in the legend/symbol and not in the background of signs.

38. In existing Section 2A.11 (new Section 2A.10) Sign Colors, the FHWA proposes to add an OPTION statement that allows the use of fluorescent colors when the corresponding color is required. The FHWA proposes this change in order to give jurisdictions the flexibility to use fluorescent colors when they determine that they are needed in order to attract additional attention to the signs. As part of this proposal, FHWA proposes to revise the color specifications in title 23 of the Code of Federal Regulations, part 655, appendix to subpart F, Tables 3, 3A, and 4 to add the fluorescent version of the color red. The color specifications for fluorescent yellow, fluorescent orange and fluorescent pink are already included in 23 CFR 655. The FHWA has reviewed color properties of the fluorescent red signing and materials available from a variety of manufacturers and proposes to add daytime color coordinates and luminance factors for fluorescent red retroreflective sign material (Tables 3 and 3A), and add nighttime color coordinates for fluorescent red retroreflective sign material (Table 4). The proposed values for fluorescent red in the tables are as indicated below:

TABLE 3.—DAYTIME CHROMATICITY COORDINATES FOR FLUORESCENT RED RETROREFLECTIVE SIGN MATERIAL

x	y
0.666	0.334
0.613	0.333
0.671	0.275
0.735	0.265

TABLE 3A.—DAYTIME LUMINANCE FACTORS FOR FLUORESCENT RED RETROREFLECTIVE SIGN MATERIAL

Minimum	Maximum	Y_F
20	30	15

TABLE 4.—NIGHTTIME CHROMATICITY COORDINATES FOR FLUORESCENT RED RETROREFLECTIVE SIGN MATERIAL

x	y
0.680	0.320
0.645	0.320
0.712	0.253
0.735	0.265

The FHWA has also reviewed the existing daytime color coordinates for fluorescent pink retroreflective sign materials and believes that these coordinates are overly restrictive for current technology. The FHWA proposes to revise the color coordinates in Table 3 for fluorescent pink, to include a fifth pair of x and y coordinates, to better define the color of fluorescent pink sign sheeting material. The proposed values for fluorescent pink in Table 3 are as follows:

TABLE 3.—DAYTIME CHROMATICITY COORDINATES FOR FLUORESCENT PINK RETROREFLECTIVE SIGN MATERIAL

x	y
Exist. 0.450 Prop. 0.600.	Exist. 0.270 Prop. 0.340
Exist. 0.590 Prop. 0.450.	Exist. 0.350 Prop. 0.332
Exist. 0.644 Prop. 0.430.	Exist. 0.290 Prop. 0.275
Exist. 0.563 Prop. 0.536.	Exist. 0.230 Prop. 0.230
Exist.—Prop. 0.644 ...	Exist.;— Prop. 0.290

39. The FHWA proposes to make several changes to Table 2A–4 Common Uses of Sign Colors, to correspond to proposed changes in the text. Specifically, the FHWA proposes to add the color purple for Electronic Toll Collection signs and to remove the use of the color yellow from school signs. The FHWA also proposes to add additional types of Changeable Message Signs and expand the table to include various legend and background colors for those signs, consistent with the proposed text of proposed new Chapter 2M as discussed below. In addition, the FHWA proposes to note that fluorescent versions of orange, red, and yellow background colors may be used.

40. In existing Section 2A.12 (new Section 2A.11) Dimensions, the FHWA proposes to add new provisions to the STANDARD and GUIDANCE statements regarding the appropriate use of the various columns in the Tables throughout the MUTCD that describe sizes for signs on various classes of roads. The FHWA proposes this new language to clarify how the columns in the sign size tables are intended to be used. The FHWA also proposes adding language in each of the sections throughout the MUTCD that refer to a sign size table, to refer back to this generally applicable text in existing Section 2A.11 (new Section 2A.12), and to delete repetitive text on use of the various columns in the size tables that appears in other sections throughout the MUTCD.

41. In existing Section 2A.13 (new Section 2A.12) Symbols, the FHWA proposes to add a STANDARD statement and a corresponding OPTION statement at the end of the section prohibiting the use of symbols from one type of sign on a different type of sign, except in limited circumstances or as specifically authorized in the MUTCD. The FHWA proposes this change because the colors and shapes of symbols are designed to have a specific impact depending on the intended use of that type of sign. Intermixing symbols from one type of sign to a different type of sign may not have the same impact and may be potentially confusing, and therefore should be specifically prohibited. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

42. In existing Section 2A.14 (new Section 2A.13) Word Messages, the FHWA proposes to revise the first GUIDANCE statement to recommend that the minimum specific ratio for letter height should be 22 mm (1 in) of letter height per 9 m (30 ft) of legibility distance. In conjunction with this proposed change, the FHWA proposes to delete the SUPPORT statement that follows this first GUIDANCE statement. The FHWA proposes these changes in order to be consistent with

recommendations from the Older Driver handbook [10] that sign legibility be based on 20/40 vision. Most States allow drivers with 20/40 corrected vision to obtain driver's licenses, and with the increasing numbers of older drivers the FHWA believes that 20/40 vision should be the basis of letter heights used on signs. This proposed change will generally not impact the design of guide signs because existing MUTCD provisions for guide sign letter heights provide sufficient legibility distances for 20/40 vision in most cases. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies. The sizes of some regulatory and warning signs used in some situations will need to be increased to provide for larger letter sizes. Specific changes to sign sizes resulting from the proposed change in Section 2A.14 are discussed below in the items pertaining to the sign size tables in other Chapters in Part 2 and in certain other Parts of the MUTCD.

43. In existing Section 2A.15 (new Section 2A.14) Sign Borders, the FHWA proposes to clarify the GUIDANCE statement to indicate that the corner and border radii on signs should be concentric with one another. The FHWA proposes this clarification to better facilitate the use of sign fabrication software with inset borders.

44. The FHWA proposes adding a new section following existing Section 2A.15 (new Section 2A.14) Sign Borders. The proposed new section is numbered and titled ''Section 2A.15 Enhanced Conspicuity for Standard Signs'' and contains an OPTION statement regarding the methods that may be used to enhance the conspicuity of standard regulatory, warning, or guide signs and a STANDARD statement prohibiting the use of strobe lights as a sign conspicuity enhancement method. The various conspicuity enhancement methods proposed reflect widespread and successful practices by State and local agencies. The FHWA proposes this new section to provide improved uniformity of such treatments to benefit road users. The remaining sections in Chapter 2A would be renumbered accordingly.

45. In existing Section 2A.16 Standardization of Location, the FHWA proposes to add to the first GUIDANCE an additional recommended criterion for locating signs where they do not obscure the sight distance to approaching vehicles on a major street for drivers who are stopped on minor-street approaches. The FHWA proposes this change to reflect good engineering practice and improve safety.

The FHWA also proposes to add to the 3rd GUIDANCE statement that the placement of wayfinding and acknowledgment guide signs should have a lower priority than other guide signs. The FHWA proposes this change to clarify the priority of sign type placement, reflecting the proposed addition to the manual of new types of guide signs.

The FHWA also proposes to add a paragraph to the last GUIDANCE statement to provide recommendations on the placement of STOP and YIELD signs at intersections, to clarify that the dimension shown in Figure 2A–3 for the maximum distance of STOP or YIELD signs from the edge of pavement of the intersected roadway is GUIDANCE.

46. In Section 2A.18 Mounting Height, the FHWA proposes to change the first SUPPORT statement to a STANDARD to require that the provisions of this section apply to all signs and object markers, unless specifically stated otherwise elsewhere in the Manual. The FHWA proposes this change to emphasize that the mounting heights in this section are mandatory, particularly as they relate to pedestrian considerations.

The FHWA also proposes to add a SUPPORT statement that refers the reader to Chapter 2L for mounting heights for object markers and clarifies that the minimum heights given in combination with crashworthy supports may not necessarily constitute a crashworthy sign assembly. The FHWA proposes this new text to provide readers with the appropriate references to materials with additional information on mounting heights and crashworthiness.

In addition to reorganizing the text within the STANDARD statements in this section, the FHWA proposes to clarify that mounting heights should be measured vertically from the bottom of the sign to the level of the near edge of the pavement. The FHWA also proposes to add text to clarify that a minimum height of 2.1 m (7 ft) is to be used for signs installed at the side of the road in business, commercial, or residential areas where parking or pedestrian movements are likely to occur, or where the view of the sign might be obstructed, or where signs are installed above sidewalks. In concert with these changes, the FHWA proposes to add a GUIDANCE statement recommending that a sign not project more than 100 mm (4 in) into a pedestrian facility if the bottom of a secondary sign that is mounted below another sign, is mounted lower than 2.1 m (7 ft). The FHWA proposes these changes in order to make the mounting height language consistent throughout the Manual, and to add language that requires consideration of pedestrian activity in the vicinity of signs, per ADAAG provisions.[11]

Finally, the FHWA proposes to add to the new third STANDARD statement that where large signs are installed on multiple breakaway posts, the clearance from the ground to the bottom of the sign shall be at least 2.1 m (7 ft), in order to provide consistency with other parts of the Manual.

47. In Section 2A.19 Lateral Offset, the FHWA proposes to add a GUIDANCE statement that overhead sign supports and post-mounted sign and object marker supports should not intrude into the usable width of a sidewalk or other pedestrian facility. The FHWA proposes this new text to comply with ADAAG provisions.[12]

Discussion of Proposed Amendments Within Chapter 2B

48. In Section 2B.02 Design of Regulatory Signs, the FHWA proposes changing the first SUPPORT statement to a STANDARD statement to clarify that regulatory signs are rectangular unless specifically designated otherwise. As part of this change, the FHWA also proposes adding a reference to the Standard Highway Signs and Markings [13] book for sign design elements.

The FHWA also proposes relocating the first two paragraphs of existing Section 2B.54 to a new OPTION statement in Section 2B.02, because the paragraphs contain information about regulatory word messages and symbols which is more relevant in this section.

49. In Section 2B.03 Size of Regulatory Signs, the FHWA proposes to add a new STANDARD statement at the end of the section that requires that

[10] ''Highway Design Handbook for Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–103, May, 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01103/coverfront.htm*. Also see recommendation number II.A(1) in ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May, 2001, which can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm*.

[11] The Americans With Disabilities Accessibility Guidelines (ADAAG) can be viewed at the following Internet Web site: *http://www.access-board.gov/ada-aba/index.htm*.

[12] The Americans With Disabilities Accessibility Guidelines (ADAAG) can be viewed at the following Internet Web site: *http://www.access-board.gov/ada-aba/index.htm*.

[13] The current edition of ''Standard Highway Signs and Markings,'' FHWA, 2004 Edition, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/ser-shs_millennium.htm*.

minimum sizes for certain regulatory signs facing traffic on multi-lane conventional roads shall be as shown on Table 2B–2, and requiring a specific minimum size for STOP signs that face multi-lane approaches. The FHWA proposes this new text and table to provide signs on multi-lane approaches that are more visible and legible to drivers with visual acuity of 20/40. On multi-lane roads, increased legibility distances are also needed due to the potential blockage of signs by other vehicles. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

50. The FHWA proposes to make several changes to Table 2B–1 Regulatory Sign and Plaque Sizes. These proposed changes include adding more sizes in the ''Minimum'' column for use in low speed environments. The FHWA also proposes to add several more signs and supplemental plaques to the table to correspond with other proposed changes within Part 2.

51. The FHWA proposes to add a new section following Section 2B.03 numbered and titled, ''Section 2B.04 Right-of-Way at Intersections.'' This proposed new section contains information currently contained in Section 2B.05. In addition, the FHWA proposes additional recommendations on the factors that should be considered in establishing intersection control and the use of STOP and YIELD signs. The proposed additional guidance is intended to provide a more logical progression from least restrictive to more restrictive controls.

The FHWA also proposes to include a STANDARD statement that prohibits the use of STOP and YIELD signs in conjunction with other traffic control signal operation, except for the cases specified in the STANDARD. While much of this information is in existing Section 2B.05, the FHWA proposes to add a specific case regarding channelized turn lanes to the list of cases where STOP or YIELD signs can be used, reflecting common practice.

Finally, the FHWA proposes to include requirements for the use of folding STOP signs for traffic signal power outages by adding language to the MUTCD that corresponds to Official Interpretation #2–545.[14]

52. The FHWA proposes to renumber and retitle existing Section 2B.04 to ''Section 2B.05 STOP Sign and Supplemental Plaques.'' As part of this change, the FHWA proposes to require the use of the ALL-WAY supplemental plaque if all intersection approaches are controlled by STOP signs, to limit the use of the ALL-WAY plaque to only those locations where all intersection approaches are controlled by STOP signs, and to prohibit the use of supplemental plaques with the legend 2-WAY, 3-WAY, 4-WAY, etc. below STOP signs. The FHWA proposes these changes to provide uniformity in the use of supplemental plaques with STOP signs, especially at locations where all approaches are controlled by STOP signs.

The FHWA proposes to add a GUIDANCE statement recommending the use of plaques with appropriate alternate messages, such as TRAFFIC FROM RIGHT DOES NOT STOP, where STOP signs control all but one approach to the intersection. The FHWA proposes this change to encourage the use of these plaques at intersections that need increased driver awareness regarding an unexpected right-of-way control.

Finally, the FHWA proposes to add an OPTION allowing the use of a proposed new EXCEPT RIGHT TURN (R1–10P) plaque mounted below a STOP sign when an engineering study determines that a special combination of geometry and traffic volumes is present that makes it possible for right-turning traffic on the approach to be permitted to enter the intersection without stopping. The FHWA proposes this change to give agencies flexibility in establishing right-of-way controls for such special conditions. The Sign Synthesis Study[15] found that at least 12 States have developed 7 different sign messages for this purpose. The FHWA proposes the uniform use of the simplest, most accurate legend.

53. The FHWA proposes to relocate much of the information in existing Section 2B.05 (new Section 2B.06) STOP Sign Applications to the proposed new Section 2B.04. The FHWA also proposes to add additional language to the remaining GUIDANCE statement that lists conditions under which the use of a STOP sign should be considered. This change would provide agencies with specific and quantitative guidance regarding the use of STOP signs.

54. The FHWA proposes to delete existing Section 2B.06 STOP Sign Placement from the MUTCD, because most of the text in this section is proposed to be incorporated into Section 2B.10.

55. In Section 2B.09 YIELD Sign Applications, the FHWA proposes to clarify the STANDARD statement by adding that YIELD signs at roundabouts shall be used to control the approach roadways and shall not be used to control the circular roadway. The FHWA proposes this change to provide uniformity in signing at roundabouts and to reflect the prevailing practices of modern roundabout design.

56. The FHWA proposes to retitle Section 2B.10 to ''STOP Sign or YIELD Sign Placement'' to reflect the relocation of language regarding STOP sign placement from existing Section 2B.06 to this section.

The FHWA proposes to delete the requirement from the first STANDARD statement that YIELD signs be placed on both the left and right sides of approaches to roundabouts with more than one lane and instead make this a recommendation in a GUIDANCE statement near the end of the Section. In concert with this change, the FHWA proposes to add an OPTION allowing similar placement of a YIELD sign on the left-hand side of a single lane roundabout approach if a raised splitter island is available. The FHWA proposes these changes to reflect current practice on signing roundabout approaches and to allow agencies additional flexibility.

The FHWA also proposes to add to the first STANDARD statement that no items other than retroreflective strips on the supports, official traffic control signs, sign installation dates, or several other inventory-type items shall be mounted on the fronts or backs of STOP or YIELD signs or on their supports. In conjunction with this proposed change, the FHWA proposes to clarify the first GUIDANCE statement to indicate that a sign that is mounted back-to-back with a STOP or YIELD sign should stay within the edges of the STOP or YIELD sign, and that if needed, the size of the STOP or YIELD sign should be increased to accomplish this recommendation. The FHWA proposes these changes to clarify the language that resulted in confusion amongst some practitioners regarding the placement of messages on the back of STOP and YIELD signs and to assure that the shape of these critical intersection right-of-way signs can be discerned from the opposite direction of approach. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies. This proposed new phase-in compliance period would supersede the existing phase-in compliance period (for existing

[14] FHWA's Official Interpretation #2–545, April 9, 2004, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/pdf/2_545.pdf.*

[15] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 18, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

Sections 2B.06 and 2B.10) of 10 years from the effective date of the Final Rule for the 2003 edition, or December 20, 2013.

The FHWA proposes to add a STANDARD statement at the end of the section prohibiting the placement of two STOP signs or two YIELD signs on the same support facing the same direction. The FHWA proposes this change to prohibit this practice, because it is potentially confusing and not an acceptable method of adding emphasis.

57. The FHWA proposes to retitle Section 2B.11 to ''Yield Here to Pedestrians Signs and Stop Here for Pedestrians Signs'' to reflect additional language that FHWA also proposes to add to this section regarding the use of Stop Here for Pedestrians Signs. The proposed new language would be consistent with similar language proposed in Part 7 regarding the placement of these signs, as well as stop and yield lines. The FHWA proposes adding the Stop Here for Pedestrians sign because some State laws require motorists to come to a full stop for, rather than yield to, pedestrians in a crosswalk.

In addition, the FHWA proposes to add STANDARD and OPTION statements at the end of the section regarding the combination use of Pedestrian Crossing warning (W11–2) signs with the Yield Here to (Stop Here for) Pedestrian (R1–5 series) sign. The FHWA proposes these additions to allow Pedestrian Crossing signs to be mounted overhead but not post-mounted where Yield Here to (Stop Here for) signs have been installed. The FHWA also proposes to allow the use of advance Pedestrian Crossing (W11–2) signs on the approach with AHEAD or distance plaques and In-Street Pedestrian Crossing signs at the crosswalk where Yield Here to (Stop Here for) Pedestrian signs have been installed. The FHWA proposes this new language to be consistent with similar language proposed in Part 7, which is based on FHWA's Official Interpretation #2–566.[16]

58. In Section 2B.12 In-Street and Overhead Pedestrian Crossing Signs, the FHWA proposes to add STANDARD, GUIDANCE and OPTION statements regarding the use of a proposed new Overhead Pedestrian Crossing (R1–9 or R1–9a) sign that may be used to remind road users of laws regarding right-of-way at an unsignalized pedestrian crosswalk. The FHWA proposes to add this sign based on the Sign Synthesis Study,[17] which revealed that some agencies use an overhead sign, because it is needed in some applications. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies. The FHWA proposes to add this sign to Table 2B–1, Figure 2B–2 and to the appropriate text and figures in Part 7, for consistency.

The FHWA also proposes to insert new GUIDANCE and OPTION statements between the first OPTION and GUIDANCE statements regarding conditions and criteria to be used in determining when In-Street Pedestrian Crossing signs should be used at unsignalized intersections. The FHWA proposes these additional statements to provide for more uniform application of these signs and discourage over-use.

The FHWA also proposes to add a STANDARD statement restricting the placement of the In-Street Pedestrian Crossing sign to the roadway at the crosswalk location on the center line, on a lane line, or on a median island. In concert with this change, the FHWA proposes to add an OPTION statement permitting the W11–2 sign with downward sloping arrow to be post-mounted on the right-hand side of the street if the Pedestrian Crossing (W11–2) warning sign is used in combination with the In-Street Pedestrian Crossing sign. The FHWA proposes this new text to be consistent with similar language proposed in Part 7, which is based on FHWA's Official Interpretation # 7–64(1).[18]

In addition, FHWA proposes to revise the existing first STANDARD statement by specifying that the In-Street Pedestrian Crossing sign shall have a black legend and border on a white background, surrounded by an outer fluorescent yellow-green background area, or by an outer fluorescent yellow background area. FHWA proposes this change to clarify how the sign is to be designed and to allow the alternate color of fluorescent yellow.

The FHWA also proposes to revise the 4th paragraph of this STANDARD statement to indicate that unless an In-Street Pedestrian Crossing sign is placed on a physical island, it is to be designed to bend over and then bounce back to its normal vertical position when struck by a vehicle. The FHWA proposes this change because while all signs must be crashworthy, these in-street signs need to have special supports to minimize damage to vehicles and injuries to pedestrians if the signs are struck by a passing vehicle. The FHWA proposes a phase-in compliance period of 5 years for existing signs in good condition to minimize any impact on State or local highway agencies.

Finally, the FHWA also proposes to add a STANDARD statement prior to the last OPTION statement that provides requirements on the mounting heights for In-Street Pedestrian Crossing signs. The FHWA proposes this new STANDARD statement to preclude incorrect mounting of this sign when it is on an island.

59. In Section 2B.13 Speed Limit Sign, the FHWA proposes to add to the STANDARD statement that speed zones (other than statutory speed limits) shall only be established on the basis of an engineering study that includes an analysis of the current speed distribution of free-flowing vehicles. The FHWA proposes this change to clarify that consideration is to be given to the free-flow speed when determining altered speed zones, and to clarify that statutorily established speed limits, such as those typically established by State laws setting statewide maximum limits for various classes of roads, do not require an engineering study. The FHWA also proposes adding a new SUPPORT statement to provide additional information about the difference between a statutory speed limit and an altered speed zone.

In addition, the FHWA proposes relocating and incorporating the material from existing Section 2B.18 Location of Speed Limit Signs, to this section. The FHWA proposes this change in order to place material regarding the Speed Limit sign in one section for better clarity and flow.

The FHWA also proposes to add a new OPTION statement that permits the use of several new plaques (R2–5P series) to be mounted with the Speed Limit Sign when a jurisdiction has a policy of installing speed limit signs only on the streets that enter from a jurisdictional boundary or from a higher speed street to indicate that the speed limit is applicable to the entire city, neighborhood, or residential area unless otherwise posted. The FHWA proposes this change to reflect common practice in some urban areas, as documented by the Sign Synthesis Study,[19] and because

[16] FHWA's Official Interpretation #2–566, July 27, 2005, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/2_566.htm*.

[17] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 19, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf*.

[18] FHWA's Official Interpretation #7–64(1), July 23, 2004, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/7_64.htm*.

[19] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, pages 19–20, can be

it is often unnecessary and overly costly to install a speed limit sign on every minor residential street.

The FHWA also proposes adding a new paragraph to the first GUIDANCE statement to recommend that a Reduced Speed Limit Ahead sign be used where the speed limit is being reduced by more than 20 km/h or 10 mph, or where engineering judgment indicates the need for advance notice. The FHWA proposes this change in order to provide consistency with the recommendations contained in Chapter 2C.

60. The FHWA proposes relocating all of the text from existing Section 2B.18 Location of Speed Limit Sign to Section 2B.13 Speed Limit Sign. (See item 59 above.)

61. In existing Section 2B.19 (new Section 2B.18) the FHWA proposes to change the title to ''Movement Prohibition Signs'' to incorporate the inclusion of the proposed new No Straight Through (R3–27) sign in the GUIDANCE statement in this section. The symbolic No Straight Through sign is most commonly used for traffic restrictions associated with traffic calming programs. The sign is useful at intersections having four approaches, where the through movement to be prohibited is onto a street or road that does not have a ''Do Not Enter'' condition, such as when 90-degree turns into the roadway are allowed, but the straight ahead movement into the roadway is prohibited. This proposed new sign uses the standard Canadian MUTCD RB–10 sign as the basis of the design. The FHWA proposes to add an illustration of this new sign to Figure 2B–3.

The FHWA also proposes changing the first paragraph of the 2nd OPTION statement regarding the use of Turn Prohibition Signs adjacent to signal heads to a GUIDANCE statement. For conspicuity reasons, these signs should be mounted near the appropriate signal face, and this reflects typical practice. Therefore, the FHWA proposes to change this to a recommended practice rather than an option.

Additionally, the FHWA proposes adding new STANDARD and SUPPORT statements at the end of this section to prohibit the use of No Left Turn, No U-Turn, and combination No U-Turn/No Left Turn signs at roundabouts in order to prohibit drivers from turning left onto the circular roadway of a roundabout. The proposed language also indicates that ONE WAY and/or Roundabout Directional Arrow signs are the appropriate signs to indicate the travel direction for this condition. The FHWA proposes these changes to provide uniformity in signing at roundabouts and to reduce the possibility of confusion for drivers who intend to turn left by circumnavigating the roundabout.

62. In existing Section 2B.20 (new Section 2B.19) Intersection Lane Control Signs, the FHWA proposes to add to the GUIDANCE statement that overhead lane control signs should be installed over the appropriate lanes on signalized approaches where lane drops, multiple-lane turns with shared through-and-turn lanes, or other lane-use controls that would be unexpected by unfamiliar road users are present. The FHWA proposes this change to be consistent with proposed changes in Part 4 and to enhance safety and efficiency by providing for more effective signing for these potentially confusing situations. The FHWA proposes a phase-in compliance period of 10 years for existing locations to minimize any impact on State or local highway agencies.

The FHWA also proposes to add a paragraph at the end of the OPTION statement regarding the types of arrows that may be used on Intersection Lane Control signs at roundabouts. The FHWA also proposes to add a new figure numbered and titled ''Figure 2B–5 Intersection Lane Control Sign Arrow Options for Roundabouts'' illustrating the signs. The FHWA proposes to add this information to reflect current practice for roundabout signing and to correspond with similar options proposed for pavement marking arrows on roundabout approaches in Part 3.

63. In existing Section 2B.21 (new Section 2B.20) Mandatory Movement Lane Control Signs, the FHWA proposes to revise the first paragraph of the STANDARD statement to clarify that Mandatory Movement Lane Use Control signs shall indicate only the single vehicle movement that is required from each lane, and to clarify the placement of the signs. The FHWA also proposes to add that where three or more lanes are available to through traffic and Mandatory Movement Lane Control symbol signs are used, these shall be mounted overhead. The FHWA proposes these changes for consistency with existing Section 2B.22 (new Section 2B.21).

The FHWA also proposes to add an OPTION statement at the end of this section describing the optional use of the proposed new BEGIN RIGHT TURN LANE (R3–20R) and BEGIN LEFT TURN LANE (R3–20L) signs at the upstream ends of mandatory turn lanes. The FHWA proposes this change to give agencies flexibility to use these proposed new signs to designate the beginning of mandatory turn lanes where needed for enforcement purposes.

64. In existing Section 2B.22 (new Section 2B.21) Optional Movement Lane Control Sign, the FHWA proposes to revise the STANDARD statement to clarify that, if used, Optional Movement Lane Control signs shall be located in advance of and/or at the intersection where the lane controls apply. This proposed change also provides consistency with existing Section 2B.21 (new Section 2B.20) regarding placement of Movement Lane Control Signs.

The FHWA also proposes to add a STANDARD statement at the end of the section prohibiting the use of the word message only when more than one movement is permitted from a lane. The FHWA proposes this change to be consistent with other requirements in the MUTCD regarding the use of the term ONLY for lane use.

65. In existing Section 2B.23 (new Section 2B.22) Advance Intersection Lane Control Signs, the FHWA proposes to add a STANDARD at the end of the section prohibiting the overhead placement of Advance Intersection Lane Control (R3–8) signs where the number of lanes available to through traffic on an approach is three or more. In such cases, overhead R3–5 signs are used. The FHWA proposes this change to be consistent with existing Section 2B.20 (new Section 2B.19).

66. The FHWA proposes adding a new section following new Section 2B.22 (existing Section 2B.23). The new section is numbered and titled, ''Section 2B.23 RIGHT (LEFT) LANE MUST EXIT Sign.'' This proposed new section contains an OPTION statement describing the use of this sign for a lane of a freeway or expressway that is approaching a grade-separated interchange where traffic in the lane is required to depart the roadway onto the exit ramp at the next interchange. As documented in the Sign Synthesis Study,[20] at least 12 States currently use this type of regulatory sign for freeway lane drop situations to establish the ''must exit'' regulation and make it enforceable where warning signs and markings alone have proven ineffective. (The overhead ''Exit Only'' plaque on

viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[20] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 22, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf*

guide signs is yellow and is a warning message.)

67. The FHWA proposes editorial and organizational changes to existing Sections 2B.26 through 2B.28 to improve the consistency and flow of information and improve its usability by readers. These proposed changes involve relocating paragraphs within and between these sections and reorganizing the text into five sections. The sections are numbered and titled, ''Section 2B.26 Regulatory Signs for Preferential Lanes—General,'' ''Section 2B.27 Preferential Lanes Vehicle Occupancy Definition Signs,'' ''Section 2B.28 Preferential Lane Periods of Operation Signs,'' ''Section 2B.29 Preferential Lane Ahead Signs,'' and ''Section 2B.30 Preferential Lane Ends Signs.'' As a part of this change, the FHWA proposes adding STANDARD, GUIDANCE, OPTION, and SUPPORT statements regarding regulatory signing for lanes that are restricted to Electronic Toll Collection only, as a form of preferential lane, to provide consistency in regulatory signing for this increasingly used management strategy, and regarding mounting of preferential lane regulatory signs where lateral clearance is limited, to reflect existing practices. The FHWA also proposes removing text from existing Section 2B.27 regarding the establishment and revision of high occupancy vehicle (HOV) lane operations that is not directly related to traffic control devices but is programmatic in nature, and instead refer to an FHWA program guidance document that contains this information.

68. The FHWA proposes to add several new sign images and to revise several existing sign images in existing Figure 2B–7 (new Figure 2B–8) Examples of Preferential Lane Regulatory Signs that illustrate the various regulatory signs used to designate HOV and bus preferential lanes, to reflect state of the practice for improved conspicuity and legibility of Preferential Lane regulatory signs for HOV Lanes, and to reflect recent FHWA policy guidance on traffic control devices for preferential lane facilities.[21]

69. The FHWA proposes to add two sections that further describe regulatory signing at toll plazas and for managed lanes. The proposed sections are numbered and titled, ''Section 2B.31 Regulatory Signs for Toll Plazas'' and ''Section 2B.32 Regulatory Signs for Managed Lanes and ETC Only Lanes.'' The FHWA proposes these new sections in order to provide consistency and uniformity in signing practices for these types of facilities, which are becoming increasingly common and for which uniform signing provisions are not currently contained in the MUTCD. The proposed provisions generally reflect available guidance such as the Toll Plaza Best Practices and Recommendations report[22] and various FHWA publications on managed lanes.[23] As a part of these changes, new symbols that denote exact change and attended lanes are proposed for use in toll plaza signing in order to help road users more quickly identify the proper lane(s) to choose for the type of toll payment they will use. A new symbol that denotes that a toll facility's ETC payment system is nationally interoperable with all other ETC payment systems is also proposed for future use as this interoperability is anticipated to become available in the next few years. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

70. The FHWA proposes to add a new section titled, ''Section 2B.33 Jughandle Signs.'' The new section contains SUPPORT, STANDARD, and OPTION statements regarding the use of regulatory signs for jughandles. Regulatory signing for jughandles is critical because the geometry typically requires left turns and U-turns to be made via a right turn, either in advance of or beyond the intersection, and this is contrary to normal driver expectations. The Sign Synthesis Study[24] found that jughandles are currently in common use in at least six States and the FHWA believes that jughandles are likely to see increasing use in the future in more States in order to improve intersection safety and operations. Therefore, in order to provide agencies with uniform signing practices for several of the most common geometric layouts of jughandles, the FHWA proposes this new section along with several new signs and a figure to illustrate their use. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

71. In existing Section 2B.29 (new section 2B.34) Do Not Pass Sign, the FHWA proposes to introduce a new symbol sign that has been in use and well understood in Europe and Canada (the Canadian MUTCD RB–31 sign) for many decades.[25] The FHWA proposes to add this symbol sign due to the need to reduce the number of word message signs, increase symbolization, and promote better harmony due to globalization and increasing international travel. Because this symbol is new, the FHWA proposes to allow the use of a DO NOT PASS educational plaque with this sign. The FWHA also proposes to allow the optional continued use of the existing word message sign.

72. The FHWA proposes to add two new sections following existing Section 2B.29 (new Section 2B.34). The first new section, numbered and titled, ''Section 2B.35 DO NOT PASS WHEN SOLID LINE IS ON YOUR SIDE Sign,'' contains an OPTION statement describing the use of this word sign. As found by the Sign Synthesis Study,[26] at least five States use signs to remind road users of the meaning of a solid yellow line for no-passing zones, however, there is considerable variety in the wording that is used. The term ''Do No Pass'' is preferable because that same terminology has been used in the R4–1 sign. ''Solid Line'' is preferable because it is fewer words and all center lines are yellow, so it is not necessary to state the color of the line. ''On Your Side'' is simpler and easier to understand than ''right of center line'' or ''in your lane.'' Therefore, the FHWA proposes that the new sign have a standard message of ''Do Not Pass When Solid Line Is On Your Side'' in order to provide consistency and uniformity. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good

[21] This August 3, 2007 FHWA policy memorandum can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/policy/tcdpflmemo/preferen_lanes_tcd.pdf.*

[22] ''State of the Practice and Recommendations on Traffic Control Strategies at Toll Plazas,'' June 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/rpt/tcstoll/index.htm.*

[23] ''Managed Lanes—A Primer,'' FHWA publication number FHWA–HOP–05–031, can be viewed at the following Internet Web site: *http://www.ops.fhwa.dot.gov/publications/managelanes_primer/managed_lanes_primer.pdf* and ''Managed Lanes—A Cross-Cutting Study,'' FHWA report number FHWA–HOP–05–037, November, 2004, can be viewed at the following Internet Web site: *http://ops.fhwa.dot.gov/freewaymgmt/publications/managed_lanes/crosscuttingstudy/final3_05.pdf.*

[24] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 24, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[25] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 24, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[26] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 24, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

condition to minimize any impact on State or local highway agencies.

73. The second new proposed section is numbered and titled, ''Section 2B.36 DO NOT DRIVE ON SHOULDER Sign and DO NOT PASS ON SHOULDER Sign'' and contains an OPTION statement regarding the use of these two proposed new signs to inform road users that use of the shoulder as a travel lane or to pass other vehicles is prohibited. The FHWA proposes these two new signs because the Sign Synthesis Study [27] found that at least 19 States are using some version of regulatory sign to prohibit driving, turning, and/or passing on shoulders and the FHWA feels that consistent and uniform messages for these purposes should be provided to road users. The remaining sections would be renumbered accordingly.

74. The FHWA proposes to retitle existing Section 2B.31 (new Section 2B.38) ''SLOWER TRAFFIC KEEP RIGHT Sign and KEEP RIGHT EXCEPT TO PASS Sign'' and expand the existing OPTION and GUIDANCE statements in this section to add the proposed new KEEP RIGHT EXCEPT TO PASS sign. The Sign Synthesis Study [28] found that at least 19 States use a ''Keep Right Except to Pass'' sign to legally require vehicles to stay in the right-hand lane of a multi-lane highway except when passing a slower vehicle, and the FHWA feels that a consistent message should be provided to road users.

75. The FHWA proposes to retitle existing Section 2B.32 (new Section 2B.39) to ''TRUCKS USE RIGHT LANE Sign'' and revise the section to discontinue the use of the TRUCK LANE XXX FEET (R4–6) as a regulatory sign because the message is one of guidance information (distance to the start of the truck lane) rather than regulatory in nature. This is consistent with proposed changes in Chapter 2D that adds a new guide sign with this message. Also, the FHWA proposes to add an OPTION that describes the appropriate optional use of the TRUCKS USE RIGHT LANE sign on multi-lane roadways to reduce unnecessary lane changing.

76. In existing Section 2B.33 (new Section 2B.40) Keep Right and Keep Left Signs, the FHWA proposes to add a new narrow Keep Right (R4–7c) sign that may be installed on narrow median noses where there is insufficient lateral clearance for a standard width sign. The FHWA proposes this new sign, which is only 12 inches wide rather than the standard 24 inch wide R4–7 sign, to reflect current practice in some States and to provide other agencies with the flexibility to use this sign where applicable.

77. The FHWA proposes adding three new sections following existing Section 2B.33 (new Section 2B.40). The first proposed new section is numbered and titled ''Section 2B.41 STAY IN LANE Sign'' and contains OPTION and GUIDANCE statements on the use of STAY IN LANE (R4–9) signs and the pavement markings that should be used with them. The second proposed new section is numbered and titled ''Section 2B.42 RUNAWAY VEHICLES ONLY Sign'' and contains a GUIDANCE statement regarding the use of the RUNAWAY VEHICLES ONLY Sign near truck escape ramp entrances. Both the STAY IN LANE and RUNAWAY VEHICLES ONLY signs are existing signs illustrated in existing Figure 2B–8 (new Figure 2B–13), but not described in the existing text of the MUTCD. The third proposed new section is numbered and titled, ''Section 2B.43 Slow Vehicle Turn-Out Signs'' and contains SUPPORT, OPTION, and STANDARD statements regarding three proposed new signs that may be used on two-lane highways where physical turn-out areas are provided for the purpose of giving a group of faster vehicles an opportunity to pass a slow-moving vehicle. As documented in the Sign Synthesis Study,[29] at least eight States, mostly in the west, use regulatory signs to legally require slow moving vehicles to use the turnout if a certain number of following vehicles are being impeded. Most of the eight States use similar wording on their signs, but there are some variations. The FHWA proposes a phase-in compliance period of 10 years for the use of Slow Vehicle Turn-Out signs to minimize any impact on State or local highway agencies. The FHWA proposes adding these new signs to provide for uniformity of the message. The remaining sections in Chapter 2B would be renumbered accordingly.

78. In existing Sections 2B.34 and 2B.35 (new Sections 2B.44 and 2B.45), the FHWA proposes to allow lower mounting heights for Do Not Enter and Wrong Way signs as a specific exception when an engineering study indicates that it would address wrong-way movements at freeway/expressway entrance ramps. The FHWA proposes this exception based on recommendations from the Older Driver handbook [30] and positive experience in several States.

79. In existing Section 2B.36 (new Section 2B.46) Selective Exclusion Signs, the FHWA proposes to change the legend of several existing selective exclusion signs to use the word NO rather than PROHIBITED or EXCLUDED, to simplify the messages and make them easier to read from a distance. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

The FHWA also proposes to add regulatory AUTHORIZED VEHICLES ONLY and FOR OFFICIAL USE ONLY signs to the last OPTION statement to reflect current practice.

80. In existing Figure 2B–18 (new Figure 2B–29) Pedestrian Signs and Plaques, the FHWA proposes to modify the designs of the R10–3, R10–3a through R10–3e, R10–4, R10–4a, and R10–4b to include the Canadian MUTCD standard symbol for pushbuttons (in addition to the words), to begin the symbolization of the ''pushbutton'' message. The FHWA proposes this change to provide better harmony in North American signing design, which is needed as a result of the increased travel between the US, Canada, and Mexico resulting from NAFTA. The FHWA proposes to use this new pushbutton symbol on several signs throughout the MUTCD.

81. In existing Section 2B.37 (new Section 2B.47) ONE WAY Signs, the FHWA proposes to change the existing GUIDANCE statement to a STANDARD to require, rather than recommend, that ONE WAY signs be placed on the near right, far left, and far right corners of each intersection with the directional roadways of divided highways. The FHWA proposes a phase-in compliance period of 10 years for existing locations to minimize any impact on State or local highway agencies. The FHWA proposes to revise Figures 2B–18 through 2B–20 accordingly. In concert with this proposed change, the FHWA proposes to revise the second paragraph of the OPTION statement to clarify that agencies may omit the use of certain ONE WAY signs at intersections with

[27] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 25, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[28] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 25, can be viewed at the following Internet Web site *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[29] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 25, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[30] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May, 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendation II.D(4d).

medians less than 9 m (30 ft). The FHWA proposes to require the installation of ONE WAY signs to reflect recommendations from the Older Driver handbook.[31]

The FHWA also proposes to add two new paragraphs to the 2nd STANDARD statement to require two ONE WAY signs for each approach for T-intersections and cross intersections, one near side and one far side. The FHWA proposes this change to reflect recommendations from the Older Driver handbook.[32]

The FHWA also proposes to add new OPTION, GUIDANCE, and SUPPORT statements at the end of the Section regarding the use of ONE WAY signs on central islands of roundabouts. The FHWA proposes to add this text to promote consistency in signing for roundabouts.

82. The FHWA proposes to relocate the information from existing Section 2E.50 to a new section numbered and titled, ''Section 2B.48 Wrong-Way Traffic Control at Interchange Ramps.'' The FHWA proposes this change because these types of signs are regulatory in nature, rather than guide signs. The remaining sections would be renumbered accordingly.

83. In existing Section 2B.38 (new Section 2B.49) Divided Highway Crossing Signs, the FHWA proposes to change the first OPTION statement to a STANDARD and revise the text to require the use of Divided Highway Crossing Signs for all approaches to divided highways in order to encompass recommendations from the Older Driver handbook.[33] As part of this proposed change, the FHWA also proposes to add an OPTION statement to allow the sign to be omitted if the divided road has average annual daily traffic less than 400 vehicles per day and a speed limit of 40 km/h (25 mph) or less.

The FHWA also proposes changing the existing 2nd OPTION statement to a STANDARD in order to require that the Divided Highway Crossing sign be located on the near right corner of the intersection. As part of this proposed change, the FHWA also proposes to add an OPTION statement to permit the installation of an additional Divided Highway Crossing sign on the left-hand side of the approach to supplement the sign on the near right corner of the intersection. As in the previous item, these proposed changes are to implement recommendations from the Older Driver handbook. The FHWA proposes a phase-in compliance period of 10 years for the revised provisions on the use of Divided Highway Crossing signs at existing locations to minimize any impact on State or local highway agencies.

84. The FHWA proposes adding three new sections following existing Section 2B.38 (new Section 2B.49). The first proposed new section is numbered and titled ''Section 2B.50 Roundabout Directional Arrow Signs (R6–4, R6–4a, and R6–4b)'' and contains STANDARD, GUIDANCE and OPTION statements on the use of Roundabout Directional Arrow Signs. The second proposed new section is numbered and titled ''Section 2B.51 Roundabout Circulation Sign (R6–5P)'' and contains GUIDANCE and OPTION statements regarding the use of the Roundabout Circulation Sign at roundabouts and other circular intersections. The third proposed new section is numbered and titled, ''Section 2B.52 Examples of Roundabout Signing'' and it contains a SUPPORT statement referencing new Figures 2B–24 through 2B–26 that illustrate examples of regulatory and warning signs for roundabouts of various configurations. The proposed new SUPPORT statement also references other areas in the Manual that contain information on guide signing and pavement markings at roundabouts. The remaining sections in Chapter 2B would be renumbered accordingly. The FHWA proposes these new sections in order to add valuable information regarding regulatory and warning signs at roundabouts to the MUTCD. The use of roundabouts has increased over the past 10 years, and it is important that more detailed information on effective signing of roundabouts be included in the Manual in order to have consistency for road users throughout the country. The FHWA proposes a phase-in compliance period of 10 years for existing regulatory signs for roundabouts in good condition to minimize any impact on State or local highway agencies.

85. In existing Section 2B.40 (new Section 2B.54) Design of Parking, Standing, and Stopping Signs, the FHWA proposes several changes to the colors of the borders of parking signs. The FHWA proposes to revise the 2nd paragraph of the first STANDARD statement to reflect that the Parking Prohibition signs R7–201a, R8–4, and R8–7 shall have a black legend and border on a white background, and the R8–3a sign shall have a black legend and border and a red circle on a white background. The FHWA proposes these changes to reflect the existing designs of these specific signs.

The FHWA also proposes changing the last paragraph of the existing GUIDANCE statement to a STANDARD to require that a VAN ACCESSIBLE plaque be installed below the R7–8 sign where parking spaces that are reserved for persons with disabilities are designated to accommodate wheelchair vans. The FHWA proposes this change to reflect Section 502.6 of the Americans With Disabilities Act.

In addition, the FHWA proposes to add a new STANDARD statement following the (new) 2nd GUIDANCE statement that specifies the required colors of the R7–8, R7–8a, and R7–8b signs, to reflect the existing sign color schemes for these signs as illustrated in existing Figure 2B–16 (new Figure 2B–27).

Finally, the FHWA proposes to add GUIDANCE and STANDARD statements prior to the last OPTION statement regarding the use of proposed new Pay for Parking and Parking Pay Station signs where a fee is charged for parking and a midblock pay station is used instead of individual parking meters. The FHWA proposes to add these signs to reflect current practice in many areas where cities and towns are replacing individual parking space meters with a ''pay and display'' system. The FHWA proposes a design for the fee station sign that is very similar to a standard European symbol, because the results of the Sign Synthesis Study[34] showed that several U.S. cities are using a sign very similar to the European design.

The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

86. In existing Section 2B.44 (new Section 2B.58) Pedestrian Crossing Signs, the FHWA proposes to add a GUIDANCE statement to recommend that No Pedestrian Crossing Signs be supplemented with detectable guidance, such as grass strips, landscaping, planters, fencing, rails, or barriers in order to provide pedestrians who have

[31] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May, 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm*. Recommendations I.E(4), I.K(2), and I.K(3).

[32] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May, 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm*. Recommendations I.K(4) and I.K(5).

[33] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May, 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm*. Recommendation I.K(1).

[34] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 27, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf*.

visual disabilities with additional guidance as to where not to cross.

87. In existing Section 2B.45 (new Section 2B.59) Traffic Signal Signs, the FHWA proposes to delete the first existing GUIDANCE statement regarding the placement of Traffic Signal signs because locations of signs near signal faces are proposed to be specifically recommended for individual signs where this is appropriate.

To correspond with proposed changes in Chapter 4E requiring that signs for pedestrian pushbuttons clearly indicate which crosswalk signal is actuated by each pedestrian detector, the FHWA proposes to revise the first SUPPORT and OPTION statements in this section and the sign images in existing Figure 2B–18 (new Figure 2B–29). The proposed revisions eliminate the use of the existing R10–1, R10–3 and R10–4 sign designs because these do not identify a specific crosswalk, and therefore do not meet the proposed requirement in Chapter 4E. The FHWA proposes to redesign those signs and revise the text in this section to clarify how to use the R10 series of pushbutton signs appropriately. The FHWA also proposes to add paragraphs to the 2nd OPTION statement regarding the use of a new R10–25 sign, where a pushbutton detector has been installed for pedestrians to activate In-Roadway Warning Lights or flashing beacons, and a new R10–24 sign, where a pushbutton detector has been installed exclusively for bicyclists, to enable bicyclists to actuate a separate bike signal phase or a parallel vehicular green phase at a signalized crossing. Bikes need less time to cross than pedestrians, so the push buttons actuate timing specifically appropriate for bikes, which is an operationally efficient strategy. The FHWA proposes to add both of these new signs to reflect current practice as documented by the Sign Synthesis Study,[35] and to provide consistent and uniform messages for these purposes.

The FHWA also proposes to add a proposed new FOR MORE CROSSING TIME—HOLD BUTTON DOWN FOR 2 SECONDS sign to this section and to illustrate the sign image in existing Figure 2B–18 (new Figure 2B–29). The FHWA proposes to add this sign to correspond with comparable proposed provisions in Chapter 4E.

The FHWA also proposes to add new GUIDANCE and OPTION statements in this section regarding the location of LEFT ON GREEN ARROW ONLY, LEFT TURN YIELD ON GREEN, and LEFT TURN SIGNAL YIELD ON GREEN signs, independently and with an AT SIGNAL supplemental plaque. The FHWA proposes these new statements based on recommendations from the Older Driver handbook.[36]

In the existing 2nd GUIDANCE statement, the FHWA proposes to add locations where the skew angle of the intersection roadways creates difficulty for older drivers to see traffic approaching from their left, to the list of conditions where consideration should be given to the use of No Turn on Red signs. The FHWA proposes this change based on recommendations from the Older Driver handbook.[37]

The FHWA proposes to add to the (new) 4th OPTION statement information regarding the use of a blank-out sign instead of a NO TURN ON RED sign during certain times of the day or during portions of a signal cycle where a leading pedestrian interval is provided. The FHWA proposes this new text to correspond to other proposed changes in Part 4 regarding the use of these signs. The FHWA also proposes to add information to this OPTION statement regarding the use of a post-mounted NO TURN ON RED EXCEPT FROM RIGHT LANE sign and a NO TURN ON RED FROM THIS LANE (with down arrow) overhead sign that may be used on signalized approaches with more than one right-turn lane.

Finally, to correspond with proposed changes in Part 4 that would add a new Pedestrian Hybrid Signal, the FHWA proposes to add to the last STANDARD statement a paragraph that describes the use of a CROSSWALK STOP ON RED sign that is proposed to be required with pedestrian hybrid signals.

The FHWA proposes a phase-in compliance period of 10 years for the use of proposed new signs and proposed new sign designs at existing locations to minimize any impact on State or local highway agencies.

88. In existing Figure 2B–19 (new Figure 2B–30) Traffic Signal Signs and Plaques, the FHWA proposes to change the design of the TURNING TRAFFIC MUST YIELD TO PEDESTRIANS (R10–15) sign to be a symbolic sign. The FHWA proposes this change to reduce the number of words, give a more precise symbolized message, and make the sign more conspicuous to road users. The proposed sign design has been in extensive use by the New York City Department of Transportation. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

89. In existing Section 2B.46 (new Section 2B.60) Photo Enforced Signs and Figure 2B–1, the FHWA proposes to replace the existing word message PHOTO ENFORCED (R10–19) plaque with a new symbol plaque for Photo Enforced. The FHWA proposes to retain the existing word message plaque as an alternate. In addition, the FHWA proposes to revise the design of the TRAFFIC LAWS PHOTO ENFORCED (R10–18) sign to add the symbolic camera. The FHWA proposes these changes based on preliminary results of the ''Evaluation of Symbol Signs'' study.[38]

90. The FHWA proposes to add a new section following existing Section 2B.46 (new Section 2B.60). This new section is numbered and titled, ''Section 2B.61 Ramp Metering Signs'' and contains a GUIDANCE statement describing the recommended use of proposed new regulatory signs that should accompany ramp control signals. The FHWA proposes to add these new signs because ramp metering signals are used in several States, but there are not standard signs for them in the MUTCD, so States have developed a variety of signs, as documented by the Sign Synthesis Study.[39] In this new Section, the FHWA proposes two new signs, X VEHICLES PER GREEN and X VEHICLES PER GREEN EACH LANE. The FHWA proposes these new signs to provide uniformity in ramp meter signing. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

91. In existing Section 2B.50 (new Section 2B.65) Weigh Station Signs, the FHWA proposes to change the text of the R13–1 sign to ''TRUCKS OVER XX TONS MUST ENTER WEIGH STATION—NEXT RIGHT'' to reflect that the message is regulatory, rather than guidance. The FHWA proposes a

[35] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 29, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[36] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May, 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendation I.H(4).

[37] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May, 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendations I.A(3) and I.I(3).

[38] Preliminary results from ''Evaluation of Symbol Signs,'' conducted by Bryan Katz, Gene Hawkins, and Jason Kennedy for the Traffic Control Devices Pooled Fund Study, can be viewed at the following Internet Web site: *http://www.pooledfund.org/documents/TPF–5_065/PresSymbolSign.pdf.*

[39] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, pages 28–29, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

In addition, in Figure 2B–33, the FHWA proposes to illustrate the customary regulatory sign color of a black legend on a white background, rather than the allowable option of the reverse color pattern, for the TRUCKS OVER XX TONS MUST ENTER WEIGH STATION—NEXT RIGHT sign.

92. The FHWA proposes to add a new section following existing Section 2B.53 (new Section 2B.68). The new section is numbered and titled, ''Section 2B.69 Headlight Use Signs'' and contains GUIDANCE, SUPPORT, and OPTION statements that describe the use of several proposed new signs that may be used by States that require road users to turn on their vehicle headlights under certain weather conditions. The Sign Synthesis Study [40] found that there is a wide variation in the legends currently being used by States for this purpose. FHWA proposes these new signs to provide increased uniformity of the messages for road users. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

93. The FHWA proposes changing the number and title of existing ''Section 2B.54 Other Regulatory Signs'' to ''Section 2B.70 Miscellaneous Regulatory Signs.'' As discussed in item 48 above, the FHWA proposes to relocate the existing OPTION statements from this section to Section 2B.02. The FHWA also proposes to add a new OPTION statement regarding the use of a proposed new FENDER BENDER MOVE VEHICLES FROM TRAVEL LANES sign that agencies may use to inform road users of State laws that require them to move their vehicles to the shoulder if they have been involved in a minor non-injury crash. As an integral part of active incident management programs in many urban areas, an increasing number of States and cities are using signs requiring drivers who have been involved in relatively minor ''fender bender'' or non-injury crashes to move their vehicles to the shoulder. A variety of sign messages are in use for this purpose, as documented by the Sign Synthesis Study.[41] The FHWA proposes adding this sign because, with the increasing popularity of these laws and incident management programs, a standardized sign legend is needed. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

Discussion of Proposed Amendments Within Chapter 2C—General

94. The FHWA proposes to remove the following word signs from the MUTCD, because related symbol signs have been in use for 35 years, thereby making these word signs obsolete: HILL Sign (W7–1b) in existing Section 2C.12, DIVIDED HIGHWAY (W6–1a) and DIVIDED ROAD (W6–1b) in existing Section 2C.18, DIVIDED HIGHWAY ENDS (W6–2a) and DIVIDED ROAD ENDS (W6–2b) in Section existing 2C.19, STOP AHEAD (W3–1a) and YIELD AHEAD (W3–2a) and SIGNAL AHEAD (W3–3a) in existing Section 2C.29.

Discussion of Proposed Amendments Within Chapter 2C—Specific

95. In Section 2C.03 Design of Warning Signs, the FHWA proposes to change the last paragraph of the OPTION to a GUIDANCE statement to recommend, rather than merely allow, a fluorescent yellow-green background for warning signs regarding conditions associated with pedestrians, bicyclists, and playgrounds. Also proposed is a new STANDARD statement that would require that warning conditions associated with school buses and schools have a fluorescent yellow-green background. The FHWA is also proposing to revise similar wording in other sections in Chapter 2C and in Part 7. In the intervening years since the fluorescent yellow-green background color was introduced as an option, most highway agencies have adopted policies to use this color for school warning signs and many have also decided to use it for all warnings associated with pedestrians and bicycles. This predominant usage is due to the enhanced conspicuity provided by fluorescent yellow-green, particularly during dawn and twilight periods. The FHWA proposes these changes in Section 2C.03 to provide more uniformity and consistency in school, pedestrian, and bicycle warning signing. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

In place of the existing paragraph in the OPTION statement, the FHWA proposes to add two new paragraphs that describe allowable changes in warning sign sizes and designs. The FHWA proposes these changes to provide agencies with flexibility in designing signs to meet field conditions, such as allowing modifications to be made to the symbols shown on intersection warning signs in order to approximate the geometric configuration of the roadway.

The FHWA also proposes to add a 2nd STANDARD statement that establishes a minimum size for all diamond-shaped warning signs facing traffic on multi-lane conventional roads of 900 mm × 900 mm (36 in × 36 in). This proposal is consistent with other proposed changes as discussed above regarding existing Section 2A.13 (new Section 2A.14) that base sign size dimensions on letter sizes needed for a visual acuity of 20/40, which results in larger sign sizes. On multi-lane roads, increased legibility distances are needed due to the potential blockage of signs by other vehicles.

96. The FHWA proposes to revise Table 2C–2 Warning Sign and Plaque Sizes to incorporate additional sign series and to specify that for several diamond-shaped signs, the minimum size required for signs facing traffic on multi-lane conventional roads is 900 mm × 900 mm (36 in. × 36 in). The FHWA proposes these changes to provide signs on multi-lane approaches that are more visible to drivers with visual acuity of 20/40 and to be consistent with and incorporate other proposed changes in Chapter 2C. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

97. In Section 2C.05 Placement of Warning Signs, the FHWA proposes to revise the SUPPORT and GUIDANCE statements to refer to the use of Perception-Response Time (PRT), rather than Perception, Identification, Emotion, and Volition (PIEV) Time, in determining the placement of warning signs. The older terminology of PIEV Time has been replaced with the current term Perception-Response Time, which has come into common use and is the terminology used in the current American Association of State Highway and Transportation Officials (AASHTO) Policies. The Traffic Control Devices Handbook [42] addresses both terms but

[40] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 31, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[41] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 31, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[42] The Traffic Control Devices Handbook, 2001, is available for purchase from the Institute of Transportation Engineers, at the following Internet Web site: *http://www.ite.org.* PIEV and PRT are discussed on pages 34–39.

correctly identifies PRT as the terminology now in common use. Accordingly, it is appropriate to update the MUTCD using the common terminology PRT. In addition to proposed changes in Section 2C.05, the FHWA proposes to change the notes for Table 2C–4 by replacing ''PIEV time'' with ''PRT,'' as well as other changes in the notes and values in Table 2C–4 in order to provide adequate legibility of warning signs for 20/40 visual acuity. The FHWA proposes a phase-in compliance period of 10 years for revised placement of existing signs in good condition to minimize any impact on State or local highway agencies.

98. The FHWA proposes to add a new section after existing Section 2C.05. The new section is numbered and titled, ''Section 2C.06 Horizontal Alignment Warning Signs'' and contains SUPPORT, STANDARD, and OPTION statements regarding the use of the proposed new Table 2C–5 Horizontal Alignment Sign Selection, in which the FHWA proposes a hierarchal approach to use of these signs and plaques and proposes to define required, recommended, and optional warning signs. The FHWA proposes a standard to make the requirements applicable to freeways, expressways, and functionally classified arterials and collectors over 1,000 average annual daily traffic (AADT) and an option statement allowing their use on other roadways. These road classifications represent higher volume roadways, a larger percentage of unfamiliar drivers, and have the potential to yield the largest safety benefits in reducing crashes due to road users' lack of awareness of a change in horizontal alignment, as documented in a recent National Cooperative Highway Research Program (NCHRP) study.[43]

99. In concert with the changes in the previous item, the FHWA proposes several changes to existing Section 2C.06 (new Section 2C.07) Horizontal Alignment Signs to incorporate the proposed material in new Table 2C–5 and to provide agencies with additional information on the appropriate use of horizontal alignment signs. The FHWA also proposes to add a new Figure 2C–2 to illustrate an example of the use of warning signs for a turn, and to modify existing Figure 2C–7 (new Figure 2C–3) to illustrate horizontal alignment signs for a sharp curve on an exit ramp.

100. The FHWA proposes to relocate existing Section 2C.46 Advisory Speed Plaque so that it appears earlier in the Chapter as Section 2C.08 because of its predominant application with horizontal alignment warning signs. In addition, the FHWA proposes several revisions to the section to incorporate the proposed new Table 2C–5, and to require that Advisory Speed plaques be used where it is determined to be necessary on the basis of an engineering study that follows established traffic engineering practices.

Finally, the FHWA proposes to add OPTION and GUIDANCE statements at the end of the section describing the use of Advisory Speed plaques at toll plazas. The FHWA proposes this additional information to incorporate toll plaza signing into the MUTCD.

101. In existing Section 2C.10 (new Section 2C.09) Chevron Alignment Sign, the FHWA proposes to change the first sentence of the first OPTION statement to a STANDARD to require the use of the Chevron Alignment sign in accordance with the hierarchy of use as listed in proposed new Table 2C–5, as discussed earlier regarding new Section 2C.06. The FHWA also proposes to add information to the 2nd STANDARD statement regarding the minimum installation height of these signs. The proposed minimum mounting height of 4 feet would be an exception to the normal minimum mounting height for signs, based on established practices. The FHWA also proposes to add a reference in the GUIDANCE statement to proposed new Table 2C–6 Approximate Spacing for Chevron Alignment Signs on Horizontal Curves. The proposed spacing criteria are based on research.[44]

The FHWA also proposes to add a new STANDARD statement at the end of the section clarifying conditions in which the Chevron Alignment sign should not be used. The FHWA proposes this new text to preclude possible misinterpretations of the appropriate use of this sign.

102. In existing Section 2C.07 (new Section 2C.10) Combination Horizontal Alignment/Advisory Speed Signs, the FHWA proposes to amplify the existing STANDARD statement in order to clarify how these signs are to be used.

103. In existing Section 2C.09 (new Section 2C.12) One-Direction Large Arrow Sign, the FHWA proposes to add to the STANDARD statement a prohibition on the use of a One-Direction Large Arrow sign in the central island of a roundabout. The FHWA proposes this change in conjunction with other proposed changes in Chapters 2B and 2D to provide consistency in signing at roundabouts.

104. In existing Section 2C.11 (new Section 2C.13) Truck Rollover Warning Sign, the FHWA proposes to add a STANDARD statement at the beginning of the section to require the use of the Truck Rollover Warning sign on freeway and expressway ramps in accordance with the proposed new Table 2C–5.

The FHWA also proposes to change the existing first OPTION statement to a GUIDANCE statement to recommend the use of the Truck Rollover Warning sign for appropriate conditions.

105. The FHWA proposes to relocate existing Section 2C.36 so that it appears earlier in the Chapter as new Section 2C.14 to consolidate all sections relating to horizontal alignment in one area of the chapter for ease of reference and consistency. In addition, the FHWA proposes to revise the title of the section to ''Advisory Exit and Ramp Speed Signs,'' as well as the text to remove the optional Curve Speed sign. The Curve Speed sign has had only limited usage and, with the proposed hierarchal approach to warning signs usage for horizontal curves, this sign is no longer needed. The FHWA believes it is desirable to broaden the consistent usage of a few signs providing better driver communications rather than adding potential driver confusion with a mixed application of several signing options.

The FHWA proposes to revise the STANDARD to require that the use of the Advisory Exit Speed and Advisory Ramp Speed signs on freeway and expressway ramps be in accordance with the proposed new Table 2C–5.

In addition, the FHWA proposes several other clarifications throughout the section to aid readers on the placement of advisory speed signs and plaques.

For all of the proposed changes in applications of warning signs and plaques for horizontal curves in new Sections 2C.06 through 2C.14 and in the new Table 2C–5, the FHWA proposes a phase-in compliance period of 10 years for existing horizontal alignment signs in good condition, to minimize any impact on State or local highway agencies.

106. The FHWA proposes to add a new section numbered and titled, ''Section 2C.15 Combination Horizontal Alignment/Advisory Exit and Ramp Speed Signs.'' The FHWA proposes this new sign for optional use where ramp or exit curvature is not apparent to drivers in the deceleration or exit lane

[43] NCHRP Report 500, Volume 7, ''A Guide for Reducing Collisions on Horizontal Curves,'' can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_500v7.pdf.*

[44] FHWA/TX–04/0–4052–1, ''Simplifying Delineator and Chevron Applications for Horizontal Curves,'' dated March 2004, can be viewed at the following Internet Web site: *http://tti.tamu.edu/documents/0–4052–1.pdf.*

or where the curvature needs to be specifically identified as being on the ramp rather than on the mainline. The FHWA proposes the design and the use of this sign based on the Sign Synthesis Study,[45] which found that at least four States have developed signs for this purpose, but with varying designs. The FHWA proposes a uniform design for this type of sign, to provide consistency for road users. The remaining sections would be renumbered accordingly.

107. The FHWA proposes to relocate existing Section 2C.13 Truck Escape Ramp Signs to Chapter 2F, to reflect the proposed new classification and design of these signs as general service signs. These signs provide guidance and information messages similar in function to the signs used for weigh stations, chain-up areas, and similar highway features, so it is appropriate for these signs for truck escape ramps to be designed as general service signs.

108. In existing Section 2C.18 (new Section 2C.21) Divided Highway Sign, the FHWA proposes to add a STANDARD that the Divided Highway (W6–1) sign shall not be used instead of a Keep Right (R4–7 series) sign on the nose of a median island. The FHWA proposes this change to reflect accepted signing practices and prevent misuse of the W6–1 sign.

109. In existing Section 2C.19 (new Section 2C.22) Divided Highway Ends Sign (W6–2), the FHWA proposes to revise the existing OPTION statement to a GUIDANCE statement, recommending that the Two-Way Traffic (W6–3) sign should also be used. The FHWA proposes this change in order to be consistent with the existing GUIDANCE in existing Section 2C.34 (new Section 2C.45) that the W6–3 sign should be used for this condition.

110. The FHWA proposes to add a new section following existing Section 2C.19 (new Section 2C.22). The new section is numbered and titled, ''Section 2C.23 Freeway or Expressway Ends Signs'' and contains OPTION and GUIDANCE statements regarding the use of these proposed new signs. The FHWA proposes these new signs because there are many locations where a freeway or expressway ends by changing to an uncontrolled access highway, and it is important to warn drivers of the end of the freeway or expressway conditions. In other cases, the need for this type of warning may be generated by other conditions not readily apparent to the road user, such as the need for all traffic to exit the freeway or expressway on exit ramps. The Sign Synthesis Study[46] found that at least 21 States have developed their own standard warning signs for this purpose but with varying legends and designs. The FHWA proposes uniform designs for these signs, to provide consistency for road users. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

111. The FHWA proposes to change the title of existing Section 2C.26 (new Section 2C.30) to ''Shoulder and Uneven Lanes Signs'' to incorporate a proposed new symbolic Shoulder Drop Off sign and two plaques to warn road users of either a low shoulder or uneven lanes. The FHWA proposes this new sign as a result of the Sign Synthesis Study,[47] which found that symbol signs and/or different word messages are being used in at least 13 States to convey these or similar messages, with a wide variety of legends and symbol designs. The States are not consistent in how these symbol signs are used, with some being used for uneven lanes and some for low shoulder or shoulder drop-off conditions. The Canadian MUTCD prescribes a single standard symbol warning sign (TC–49) for use to warn of either a low shoulder or uneven lanes. The FHWA proposes to adopt the standard Canadian sign to provide a single uniform symbol for these conditions, which are similar in terms of issues for vehicular control, with supplemental educational word message plaques as needed. Adoption of the Canadian symbol will also aid in promoting North American harmony of traffic signing. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

The FHWA also proposes to add a NO SHOULDER sign to the option statement in this section to allow agencies to use a sign of uniform legend, which would warn road users that shoulders do not exist along the roadway. The FHWA proposes this new sign and its design based on the ''Sign Synthesis Study,''[48] which found inconsistencies in the legends of signs currently in use by the States for this purpose.

112. The FHWA proposes to change the title of existing Section 2C.27 (new Section 2C.31) to ''Surface Condition Signs'' in order to incorporate several additional signs and supplemental plaques into this section. The FHWA proposes to add information regarding the use of supplemental plaques with legends such as ICE, WHEN WET, STEEL DECK and EXCESS OIL with the W8–5 sign to indicate the reason that the slippery conditions might be present.

The FHWA also proposes to add information regarding the existing LOOSE GRAVEL and ROUGH ROAD word signs. These signs and plaques have been illustrated in new Figure 2C–6 and the Standard Highway Signs book but have not previously been discussed in the MUTCD text.

In addition, the FHWA proposes to incorporate the information in existing Section 2C.28 BRIDGE ICES BEFORE ROAD sign into this section in order to maintain cohesiveness of information.

Finally, the FHWA proposes to add a new symbolic Falling Rocks sign and an educational plaque to this section to reflect common practice in many States to warn road users of the frequent possibility of rocks falling (or already fallen) onto the roadway. The Sign Synthesis Study[49] found a lack of consistency in the sign legends or symbols currently in use by the States for this purpose. To provide consistency in sign design, the FHWA proposes to add a symbol sign (along with an educational plaque for use if needed) that may be used to warn road users of falling or fallen rocks, slides, or other similar situations. Although the most common sign currently used in the U.S. is a word sign, Canadian, Mexican, European, and international standards use symbols, all of which are very similar, for this message. The FHWA proposes to adopt the standard Mexican MUTCD symbol, because its design appears to offer the best simplicity and legibility. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

113. The FHWA proposes to add a new section following existing Section 2C.27 (new Section 2C.31). The new

[45] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 43, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[46] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, pages 43–44, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[47] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 37, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[48] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 37, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[49] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, pages 37–38, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

section is numbered and titled, ''Section 2C.32 Warning Signs and Plaques for Motorcyclists'' and contains SUPPORT and OPTION statements regarding the use of two new warning signs and an associated symbolic plaque that may be specifically placed to warn motorcyclists of road surface conditions that would primarily affect them, such as grooved or brick pavement and metal bridge decks. The proposed new signs are based on the results of the Sign Synthesis Study,[50] which found a variety of different messages in use by the States for these purposes. Subsequently, a study [51] evaluated several different motorcycle symbols and arrangements of such symbols both within the primary warning sign and as a supplemental plaque. The study found that the best legibility distance is provided by depicting a motorcycle on a supplementary plaque and that one particular style of motorcycle provides the best comprehension of the intended message. As a result, the FHWA proposes to adopt word message signs with standardized legends of GROOVED PAVEMENT and METAL BRIDGE DECK and a new supplementary plaque featuring a side view of a motorcycle.

The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

114. As discussed above, the FHWA proposes to incorporate all of the information contained in existing Section 2C.28 BRIDGE ICES BEFORE ROAD Sign into new Section 2C.31. The FHWA proposes to title existing Section 2C.28 (new Section 2C.33) ''NO CENTER STRIPE Sign,'' and include an OPTION statement regarding the use of the NO CENTER STRIPE Sign. The FHWA proposes this new language based on a review of the 2003 MUTCD and 2004 SHS that revealed that the MUTCD did not contain language about this existing sign, which has been illustrated in Figure 2C–4.

115. The FHWA proposes to add a new section numbered and titled, ''Section 2C.34 Weather Condition Signs'' that contains OPTION and STANDARD statements regarding the use of three proposed new signs to warn users of potential adverse weather conditions. The proposed WATCH FOR FOG, GUSTY WINDS AREA, ROAD MAY FLOOD, and Depth Gauge signs are all based on results of the Sign Synthesis Study [52] that showed that signs for these purposes were in very common use in many parts of the country, but with widely varying legends. The FHWA proposes to add uniform designs for these signs to provide road users with consistent messages. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State and local agencies.

116. The FHWA proposes to add a new section numbered and titled, ''Section 2C.36 Advance Ramp Control Signal Signs'' that contains OPTION, GUIDANCE, and STANDARD statements regarding the use of two proposed new signs. The FHWA proposes new RAMP METER AHEAD and RAMP METERED WHEN FLASHING signs to provide uniformity of signing at ramp metering locations, especially because the practice of ramp metering continues to grow. The common existing use of these signs is documented in the Sign Synthesis Study [53] and is recommended in the FHWA's Ramp Management and Control Handbook.[54] The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

117. In existing Section 2C.30 (new Section 2C.37), the FHWA proposes to change the title of the section to ''Reduced Speed Limit Ahead Signs'' to reflect the proposed change of the sign name to be consistent with the Stop Ahead, Yield Ahead, and Signal Ahead warning sign names.

The FHWA proposes revising the GUIDANCE statement to recommend that a Reduced Speed Limit Ahead sign be used where the speed limit is being reduced by more than 20 km/h or 10 mph, or where engineering judgment indicates the need for advance notice. The FHWA believes that reductions in speed limit of more than 10 mph are unexpected by road users and may require special actions to reduce speed before reaching the start of the lower speed zone, and thus justify the use of a warning sign. The FHWA proposes this change in order to provide consistency for determining where speed reduction signs should be placed. This change corresponds to proposed changes in Section 2B.13.

118. The FHWA proposes adding a new section following existing Section 2C.30 (new Section 2C.37). The new section is numbered and titled ''Section 2C.38 DRAWBRDIGE AHEAD Sign (W3–6)'' and contains a STANDARD statement and a figure regarding the use of this sign. The FHWA proposes this new Section because existing Section 4I.02 (new Section 4J.02) Design and Location of Moveable Bridge Signals and Gates requires the use of the DRAWBRIDGE AHEAD sign in advance of all drawbridges. Because the W3 series is used for advance warning signs and this sign is required in advance of the condition, it is appropriate to include the text and a figure in Chapter 2C. The remaining sections in Chapter 2C would be renumbered accordingly.

119. In existing Section 2C.31 (new Section 2C.39) Merge Signs, the FHWA proposes to add an OPTION statement at the end of the section to incorporate a proposed new NO MERGE AREA supplemental plaque that may be mounted below an Entering Roadway Merge sign, a Yield Ahead sign, or a YIELD sign to warn road users on an entering roadway or channelized right-turn movement that they will encounter an abrupt merging situation at the end of the ramp or turning roadway. When there are only a few entrance ramps or channelized right turns in an area that do not have acceleration lanes, those few locations do not meet driver expectations. The FHWA proposes this plaque based on the results of the Sign Synthesis Study [55] that indicated some States routinely use this plaque to provide road users with important warning information for these conditions.

120. In existing Section 2C.33 (new Section 2C.41) Lane Ends Signs, the FHWA proposes to add the W4–7 THRU TRAFFIC MERGE RIGHT (LEFT) sign to the OPTION statement to allow the use of this sign, as a supplement to other signs, to warn road users in the right-hand (left-hand) lane that their lane is about to become a mandatory turn or exit lane. The FHWA proposes this

[50] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, pages 39–40, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[51] Preliminary results from ''Evaluation of Symbol Signs,'' conducted by Bryan Katz, Gene Hawkins, and Jason Kennedy for the Traffic Control Devices Pooled Fund Study, can be viewed at the following Internet Web site:*http://www.pooledfund.org/documents/TPF–5_065/PresSymbolSign.pdf.*

[52] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, pages 38–39, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[53] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 34, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[54] ''Ramp Management and Control Handbook,'' FHWA, January 2006, page 5–29, can be viewed at the following Internet Web site: *http://ops.fhwa.dot.gov/publications/ramp_mgmt_handbook/manual/manual/pdf/rm_handbook.pdf.*

[55] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 34, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

change to be consistent with the current use of that sign in Part 6.

121. The FHWA proposes to add a new section following existing Section 2C.33 (new Section 2C.41). This new section is numbered and titled, ''Section 2C.42 RIGHT (LEFT) LANE EXIT ONLY AHEAD Sign.'' This proposed new section contains OPTION, STANDARD, GUIDANCE, and SUPPORT statements regarding the use of this proposed new sign to provide advance warning of a freeway lane drop. The FHWA proposes to add this sign based on the results of the Sign Synthesis Study [56] that showed several States use a similar warning sign for these conditions, particularly when overhead guide signs are not present on which to use EXIT ONLY plaques. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

122. The FHWA proposes to add two new sections numbered and titled, ''Section 2C.43 Toll Road Begins Signs'' and ''Section 2C.44 Stop Ahead Pay Toll Sign.'' Both sections include GUIDANCE, OPTION, and STANDARD statements regarding the use of these proposed new signs on toll facilities to provide for consistency and uniformity of signing for these messages and to implement the signing portions of FHWA's ''Toll Plaza Traffic Control Devices Policy.'' [57] The FHWA proposes a phase-in compliance period of 10 years for existing locations to minimize any impact on State or local highway agencies. The remaining sections would be renumbered accordingly.

123. The FHWA proposes to add a new section following existing Section 2C.34 (new Section 2C.45). The new section is numbered and titled, ''Section 2C.46 Two-Way Traffic on a Three-Lane Roadway Sign'' and contains OPTION and STANDARD statements regarding the use of this proposed new sign for warning of two-way traffic on roads having three through lanes, with one lane in one direction and two lanes in the other direction. The proposed sign is a variant of the existing W6–1 two-way traffic warning sign. The FHWA proposes this new sign for optional use based on the results of the Sign Synthesis Study [58] that indicated that several States use this type of sign to warn drivers of this condition.

124. The FHWA proposes to relocate the information from existing Section 2C.36 Advisory Exit, Ramp, and Curve Speed Signs, to Section 2C.14 in order to place all horizontal alignment warning signs in the same area of the manual.

125. In existing Section 2C.37 (new Section 2C.48) Intersection Warning Signs, the FHWA proposes to revise the existing OPTION statement to indicate that an educational plaque with a legend such as TRAFFIC CIRCLE or ROUNDABOUT may be mounted below a Circular Intersection symbol sign. The FHWA also proposes to delete from the GUIDANCE statement, the recommendation that Circular Intersection symbol warning signs should be installed on the approach to a YIELD sign controlled roundabout. The FHWA proposes these changes to provide consistency for roundabout signing throughout the MUTCD.

The FHWA also proposes to add new Offset Side Roads and Double Side Roads symbols for use on Intersection Warning Signs to the GUIDANCE statement. The FHWA proposes these new symbols based on the results of the Sign Synthesis Study [59] that showed that variants of the W2–2 sign depicting offset side roads or two closely spaced side roads are used in many States, but the relative distance between the two side roads and the relative stroke widths of the roadways varies significantly. As a result, the FHWA proposes uniform designs.

126. In existing Section 2C.38 (new Section 2C.49) Two-Direction Large Arrow Sign, the FHWA proposes to add to the STANDARD statement that the Two-Direction Large Arrow sign shall not be used in the central island of a roundabout. The FHWA proposes this change in conjunction with other proposed changes in Chapters 2B and 2D to provide consistency in signing at roundabouts.

127. In existing Section 2C.39 (new Section 2C.50) Traffic Signal Signs, the FHWA proposes to add to the STANDARD statement that the provision of flashing yellow arrow signal faces and flashing red arrow signal faces are additional exceptions to the requirement for use of W25–1 or W25–2 signs, consistent with similar proposed changes in Chapter 4D. The FHWA also proposes a clarification to the STANDARD statement that W25–1 and W25–2 signs are to be vertical rectangles, for consistency with existing Table 2C–2 Warning Sign Sizes, which indicates that the W25 series signs are rectangular in shape.

128. In existing Section 2C.40 (new Section 2C.51) Vehicular Traffic Signs and existing Section 2C.41 (new Section 2C.52) Nonvehicular Signs, the FHWA proposes to add OPTION statements regarding the use of Warning Beacons and supplemental WHEN FLASHING plaques to indicate specific periods when the condition or activity is present or is likely to be present. The FHWA proposes these changes to clarify this allowable use, for consistency with existing provisions in Part 4 regarding warning beacons.

129. The FHWA also proposes to add to the first OPTION statement in existing Section 2C.40 (new Section 2C.51) information regarding the use of the Combined Bicycle/Pedestrian sign and the TRAIL XING supplemental plaque. With the increasing mileage of shared-use paths in the U.S., the number of places where shared-use paths, used by both bicyclists and pedestrians, cross a road or highway is also increasing. To provide advance warning of these crossings and to indicate the location of the crossing itself, it is currently necessary to use both the W11–1 (bicycle) and W11–2 (pedestrian) crossing warning signs, mounted together on the same post, or sequentially along the road. The Sign Synthesis Study [60] revealed that several States have developed combination signs to simplify and improve the signing for shared-use path crossings, using either a single sign with combined bicycle and pedestrian symbols or a word message sign with a variety of different legends. The FHWA proposes to add this sign for use to serve this increasing need and to provide a uniform design for consistency. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

130. In existing Section 2C.41 (new Section 2C.52) Nonvehicular Signs, the FHWA proposes to add a new STANDARD statement that requires school signs and their related supplemental plaques to have a fluorescent yellow-green background with a black legend and border to be

[56] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 35, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[57] ''Policy on Traffic Control Strategies for Toll Plazas,'' dated October 12, 2006 can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/policy/tcstollmemo/tcstoll_policy.htm.*

[58] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 36, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[59] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 33, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[60] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 42, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

consistent with proposed changes in Chapter 2A and in Part 7. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

The FHWA also proposes to change the 2nd paragraph of the 3rd OPTION statement to a GUIDANCE to recommend, rather than merely permit, the use of fluorescent yellow-green for pedestrian, bicycle, and playground nonvehicular warning signs and their supplemental plaques. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies. These proposed changes are also reflected in existing Section 2C.42 (new Section 2C.53) Playground Sign and in Chapter 2A and Part 7.

131. In Figure 2C–12 Nonvehicular Traffic Signs, the FHWA proposes to add images of new symbolic warning signs for moose, elk/antelope/caribou, wild horses (horse without a rider), burro/donkey, sheep, bighorn sheep, and bears. The MUTCD includes only three signs to warn of the possible crossings of large animals—deer crossing (W11–3), cattle crossing (W11–4), and equestrian crossing (horse with rider, W11–7). The prevalence of other types of large animals that may cross roads (and which may cause significant damage or injury if struck by a vehicle) has caused at least 16 States to develop signs (usually symbolic) for warning of one or more different animal crossings, as documented in the Sign Synthesis Study.[61] The FHWA proposes adding the new signs because these animals all look significantly different from the three existing animal symbols and the existing standard MUTCD signs would not provide an accurate meaning and adequate warning. Also, because there is a lack of consistency in the signs currently being used for this purpose by the States, the FHWA proposes uniform symbol designs for consistency. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

132. The FHWA proposes to add a new section following existing Section 2C.42 (new Section 2C.53). The new section is numbered and titled, ''Section 2C.54 NEW TRAFFIC PATTERN AHEAD Sign'' and contains OPTION and GUIDANCE statements regarding the use of this sign to provide advance warning of a change in traffic patterns, such as revised lane usage, roadway geometry, or signal phasing. The FHWA proposes this change to reflect existing practices in many States and numerous local jurisdictions as documented in the Sign Synthesis Study[62] and to provide a uniform legend for this purpose, consistent with similar proposed changes in Part 6. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies. The remaining sections would be renumbered accordingly.

133. The FHWA proposes to add a new section after proposed new Section 2C.54. This new section is numbered and titled, ''Section 2C.55 Warning Signs on Median Barriers for Preferential Lanes'' and contains OPTION, STANDARD, and GUIDANCE statements regarding the use of warning signs applicable only to preferential lanes on median barriers. The FHWA proposes this new section for consistency with similar existing provisions for preferential lane regulatory signs in Chapter 2B and to reflect existing practices by agencies operating preferential lane facilities. The remaining sections would be renumbered accordingly.

134. The FHWA proposes to relocate the information from existing Section 2C.46 Advisory Speed Plaque, to Section 2C.08 in order to place all horizontal alignment warning signs in the same area of the manual.

135. In existing Section 2C.47 (new Section 2C.59) Supplemental Arrow Plaques, the FHWA proposes to delete the references to the W16–7 downward diagonal arrow plaque, because the W16–7 plaque is not used for the application described in this section. The diagonal downward arrow plaque is only used with Nonvehicular Crossing warning signs and has a different design than the W16–5p and W16–6p plaques, which are the subject of this Section.

136. In existing Section 2C.49 (new Section 2C.61) Advance Street Name Plaque, the FHWA proposes to add a GUIDANCE statement, and an accompanying figure, that recommends the order in which street names should be displayed on an Advance Street Name plaque. The FHWA proposes this change to provide consistency for road users.

137. In existing Section 2C.50 (new Section 2C.62) Cross Traffic Does Not Stop, the FHWA proposes to add a GUIDANCE statement to recommend that plaques with appropriate alternative messages, such as TRAFFIC FROM LEFT DOES NOT STOP, be used at intersections where STOP signs control all but one approach to the intersection. The FHWA proposes this change to be consistent with proposed changes in Chapter 2B.

138. In existing Section 2C.51 (new Section 2C.63) SHARE THE ROAD Plaque, the FHWA proposes to add a new STANDARD that requires that the SHARE THE ROAD plaque be used only as a supplement to a Vehicular Traffic or Nonvehicular sign. The FHWA proposes this change to provide road users with more clarity on the type of vehicle or nonvehicle that may be present, and because plaques are not intended for independent use.

139. In existing Section 2C.53 (new Section 2C.65) Photo Enforced Plaque, the FHWA proposes replacing the existing ''PHOTO ENFORCED'' word message plaque with a new symbol plaque designated as W16–10P. The existing word message plaque would be retained as an alternate to the new symbol plaque and its sign number reassigned as W16–10aP. The proposed new symbol plaque is illustrated in Figure 2C–14. The FHWA proposes this change based on preliminary results of the ''Evaluation of Symbol Signs'' study.[63]

140. The FHWA proposes to add a new section following existing Section 2C.53 (new Section 2C.65). The new section is numbered and titled, ''Section 2C.66 METRIC Plaque'' at the end of the section. This proposed new section contains a GUIDANCE statement that recommends the use of the METRIC plaque above a Weight Limits sign that shows the load limits in metric units. This plaque is currently illustrated in existing Figure 2B–8 and has a regulatory sign code, even though it has a black legend on a yellow background and is intended to warn road users that the values on the regulatory sign are in metrics. Accordingly, the FHWA proposes redesignating this plaque as a warning plaque and adding text regarding its use to Chapter 2C.

141. Following proposed Section 2C.66, the FHWA also proposes to add a new Section numbered and titled, ''Section 2C.67 NEW Plaque'' that describes the use of this optional plaque that may be mounted above a regulatory

[61] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, pages 41–42, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[62] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 33, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[63] Preliminary results from ''Evaluation of Symbol Signs,'' conducted by Bryan Katz, Gene Hawkins, and Jason Kennedy for the Traffic Control Devices Pooled Fund Study, can be viewed at the following Internet Web site: *http://www.pooledfund.org/documents/TPF–5_065/PresSymbolSign.pdf.*

sign when a new traffic regulation takes effect or above an advance warning sign for a new traffic regulation. The FHWA proposes that the use of this plaque be limited to 6 months after the traffic regulation has been in effect. The FHWA proposes this new plaque based on the Sign Synthesis Study,[64] which showed that some States and Canadian provinces are using similar plaques and signs for this purpose, and to provide a uniform plaque design for consistency. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

142. The FHWA also proposes two additional sections at the end of the Chapter numbered and titled, ''Section 2C.68 LAST EXIT BEFORE TOLL Plaque'' and ''Section 2C.69 Stop Ahead Pay Toll Plaque'' that describe the use of these proposed new plaques. The FHWA proposes the use of these plaques to provide for consistency and uniformity of signing for these messages and to implement the signing portions of FHWA's ''Toll Plaza Traffic Control Devices Policy.'' [65] The FHWA proposes a phase-in compliance period of 10 years for existing locations to minimize any impact on State or local highway agencies.

Discussion of Proposed Amendments Within Chapter 2D—General

143. In existing Section 2D.28 (new Section 2D.31) Junction Assembly, existing Section 2D.29 (new Section 2D.32) Advance Route Turn Assembly, and existing Section 2D.35 (new Section 2D.42) Location of Destination Signs, the FHWA proposes to revise the requirements and recommendations for the locations of these signs. In new Section 2D.31, the FHWA proposes revising the required distances to recommended distances, and in new Sections 2D.32 and 2D.42, the FHWA proposes adding new recommendations regarding the distances between signs. The FHWA proposes these changes in order to provide more flexibility for the placement of these various signs, particularly as it relates to rural areas, and to indicate that the dimensions shown on Figure 2D–7 are recommendations.

Discussion of Proposed Amendments Within Chapter 2D—Specific

144. In Section 2D.07 Amount of Legend, the FHWA proposes to revise the GUIDANCE statement to clarify that guide signs should be limited to no more than three lines of destinations, and that action information should be provided on guide signs in addition to the destinations, where appropriate. The FHWA proposes this change to reduce confusion regarding the number of lines on a guide sign and to address the results of recent NCHRP research on driver information overload.[66]

In addition, the FHWA proposes to revise the OPTION statement and add a STANDARD statement regarding the use of pictographs on guide signs. The FHWA proposes these changes in order to incorporate information regarding pictographs in the MUTCD, to reflect FHWA's Official Interpretation numbers 2–540(I) [67] and 2–565(I) [68] and to restrict the maximum size of such pictographs so that they do not detract from the primary legend of the signs.

145. In Section 2D.08 Arrows, the FHWA proposes to make several revisions to this section to clarify the use and design of arrows on guide signs. In the first STANDARD statement, the FHWA proposes to require that down arrows on overhead signs shall always be vertical and positioned directly over the approximate center of the applicable lane. However, the FHWA also proposes to add an OPTION statement that permits diagonal arrows pointing diagonally downward on overhead guide signs only if each arrow is located directly over the center of the lane and only for the purpose of emphasizing a separation of diverging roadways. Some States have installed overhead guide signs with downward slanting arrows that are not centered over the appropriate lanes, but pointing toward the center of a lane, only for the purpose of reducing sign size. The FHWA believes that overhead signs with arrows designed and oriented in this fashion are confusing to drivers because they imply movement out of a lane. The FHWA proposes these changes to prohibit the use of diagonally slanted down arrows on overhead guide signs to indicate a specific lane where roadways do not diverge, in order to reduce this confusion and assure consistent sign design practices. In concert with this proposed change, the FHWA proposes to add a paragraph to the STANDARD statement prohibiting the use of more than one down and/or diagonal arrow pointing to the same lane, for the same reasons. The FHWA proposes a phase-in compliance period of 15 years for existing signs in good condition to minimize any impact on State or local highway agencies.

The FHWA also proposes to add an OPTION statement to permit the use of curved-stem arrows that represent the intended driver paths to destinations involving left-turn movements on guide signs on approaches to roundabouts. The FHWA proposes to add a paragraph to the following GUIDANCE statement that references readers to the appropriate sections that describe the principles for such arrows.

Finally, the FHWA proposes to revise Figure 2D–2 and the text of Section 2D.08 to describe and illustrate the various types of arrows used on guide signs, to clarify appropriate arrow use.

146. In Section 2D.11 Design of Route Signs, the FHWA proposes to change the second sentence of the second OPTION statement to a GUIDANCE statement to recommend, rather than just allow, the use of a white square or rectangle behind the Off-Interstate Business Route sign when it is used on a green guide sign. The FHWA proposes this change to enhance the conspicuity of the Off-Interstate Business Route sign in this usage, since the green route sign alone blends into the green guide sign background.

147. In Section 2D.12 Design of Route Sign Auxiliaries, the FHWA proposes to add a GUIDANCE statement clarifying that if a route sign and its auxiliary signs are combined in a single sign, the background color of the sign should be green, and a STANDARD that auxiliary signs shall not be mounted directly to a guide sign. If placed on a green guide sign background, the legends of the auxiliary messages shall be white legend placed directly on the green background. The FHWA proposes these changes to provide consistency for background colors, because background colors currently in use for this application are not consistent across the country and green is the appropriate background color for a directional guide sign, and to preclude mis-application of auxiliary signs on green guide signs.

148. In Section 2D.14 Combination Junction Sign, the FHWA proposes to delete the 2nd paragraph of the OPTION statement that permitted the use of other

[64] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 33, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf*.

[65] ''Toll Plaza Traffic Control Devices Policy,'' dated September 8, 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/policy/tcstollmemo/tcstoll_policy.htm*.

[66] NCHRP Report 488, ''Additional Investigations on Driver Information Overload'' 2006, page 65, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_488c.pdf*.

[67] This official interpretation can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/2_540.htm*.

[68] This official interpretation can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/2_565.htm*.

designs to accommodate State and county route signs. The FHWA proposes this change, because it was not the intent to allow agencies to use their own unique designs that do not match the design of the M2–2 sign.

149. The FHWA proposes to add a section following Section 2D.22. The new section is numbered and titled, ''Section 2D.23 BEGIN Auxiliary Sign'' and contains OPTION and STANDARD statements regarding the use of this proposed new sign where a numbered route begins. The FHWA proposes this sign based on the Sign Synthesis Study [69] that revealed that several States use an auxiliary BEGIN sign above the confirming route marker at the start of a route to provide additional helpful information to road users. The remaining sections would be renumbered accordingly.

150. The FHWA proposes to add two new sections following existing Section 2D.23 (new Section 2D.24). The two new sections are numbered and titled, ''Section 2D.25 TOLL Auxiliary Sign'' and ''Section 2D.26 Electronic Toll Collection Only Auxiliary Signs.'' The Signs Synthesis Study [70] found that some States are using the TOLL auxiliary sign to provide road users useful information that a numbered route is a toll facility. The proposed Electronic Toll Collection Only auxiliary sign would complement and be consistent with signs proposed in Chapters 2B and 2E to inform road users that a highway is restricted to use only by ETC-equipped vehicles. The FHWA also proposes to add a new Figure 2D–5 to illustrate these signs. The FHWA proposes these new signs to provide consistency and uniformity in signing applications for toll facilities. The remaining sections and figures would be renumbered accordingly. The FHWA proposes a phase-in compliance period of 5 years for existing signs in good condition to minimize any impact on State or local highway agencies.

151. In existing Section 2D.26 (new Section 2D.29) Directional Arrow Auxiliary Signs, the FHWA proposes to add that a Directional Arrow auxiliary sign that displays a double-headed arrow shall not be mounted in advance of or at a roundabout. The FHWA proposes this change to eliminate any possible confusion that would be created by the use of this sign in the proximity of a roundabout, where direct left turns are not allowed.

152. In existing Section 2D.27 (new Section 2D.30) Route Sign Assemblies, the FHWA proposes to add a paragraph to the OPTION statement allowing diagrammatic route sign formats to be used on approaches to roundabouts. The FHWA proposes this change to incorporate signing for roundabouts in the MUTCD.

153. The FHWA proposes to add a new section following existing Section 2D.29 (new Section 2D.32). The new section is numbered and titled, ''Section 2D.33 Lane Designation Auxiliary Signs'' and contains an OPTION statement regarding the use of these optional signs that may be used as a method to tell road users which lane to get into to travel a particular numbered route and direction. The FHWA also proposes to add an additional illustration in existing Figure 2D–6 to illustrate the use of these auxiliary signs. The FHWA proposes these new signs based on the results of the Sign Synthesis Study,[71] which found that at least seven States use M6 auxiliary signs stating ''Left Lane,'' ''Center Lane,'' or ''Right Lane'' below route signs in route sign assemblies. This can be an economical alternative to one or more larger green guide signs in certain situations. The remaining sections would be renumbered accordingly.

154. The FHWA proposes to add a new section following existing Section 2D.30 (new Section 2D.34). The new section is numbered and titled, ''Section 2D.35 Combination Lane Use/ Destination Overhead Guide Sign'' and contains OPTION and GUIDANCE statements, as well as a figure, describing the use of these optional signs. The FHWA proposes this new section, and the associated signs, based on the Sign Synthesis Study.[72] At complex intersections involving multiple turn lanes, multiple destinations, service roads, and/or various constraints often found in urban areas that can limit the ability to use of a series of advance signs, many States have found it necessary to combine regulatory lane use information with destination information onto a single guide sign or sign assembly, especially to aid unfamiliar drivers in determining which lane or lanes to use for a particular destination. However, there is no consistency or uniformity in the colors used, the sign design layouts, or other aspects of these signs. The FHWA proposes a uniform design for this type of sign, to provide consistency for road users. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

155. In existing Section 2D.32 (new Section 2D.37) Trailblazer Assembly, the FHWA proposes to add a GUIDANCE statement to recommend that if shields or other similar signs are used to provide route guidance in following a trail, they should be designed in accordance with the sizes and other design principles for route signs, such as those described in Sections 2D.10 through 2D.12. The FHWA proposes this change to address situations where route signs used for named trails do not have route numbers.

156. The FHWA proposes adding a new section that is numbered and titled ''Section 2D.40 Destination Signs at Roundabouts'' and contains a STANDARD, OPTION and SUPPORT statements, as well as figures, regarding the use of Destination Signs at Roundabouts. In particular, the proposed Section includes information regarding Exit destination signs, and associated arrows and diagrammatic signs for roundabouts. The remaining sections and figures in Chapter 2D would be renumbered accordingly.

157. The FHWA also proposes to add a new section numbered and titled, ''Section 2D.41 Destination Signs at Jughandles.'' The FHWA proposes this new section because guide signing in advance of a jughandle, in addition to regulatory signing, which was discussed in Chapter 2B, is critical to advise potential left-turn or U-turn drivers of the need to move to the right and prepare to execute a right turn either before or beyond the intersection in order to reach their destination. The FHWA proposes optional use of diagrammatic-style destination signs for use at jughandles where standard directional guide signs are insufficient. A reference to a proposed new figure in Chapter 2B illustrating both regulatory and guide signs for jughandles would also be added. The remaining sections in Chapter 2D would be renumbered accordingly.

158. In existing Section 2D.38 (new Section 2D.45) Street Name Signs, the FHWA proposes to add a new OPTION statement to allow the use of a route

[69] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 52, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[70] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 52, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[71] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 53, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[72] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, pages 45–46, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

shield on Street Name signs to assist road users who may not otherwise be able to associate the name of the street with the route number. The FHWA proposes to allow the use of these signs based on the results of the Sign Synthesis Study,[73] which showed that several agencies incorporate route shields into Street Name signs on streets that are part of a U.S., State, or county numbered route. Typically route sign assemblies are only provided on intersecting roads that are also numbered routes, and on some very major unnumbered streets within cities. Including a route shield within the Street Name sign provides additional information for traffic on the lesser streets that intersect the numbered route. This is helpful to unfamiliar road users who may be attempting to find their way back to a numbered route and who do not recognize the street name.

159. The FHWA proposes to add a new table numbered and titled, ''Table 2D–2 Recommended Minimum Letter Heights on Street Name Signs'' that contains information regarding the letter sizes to be used on Street Name signs based on the mounting type, road classification, and speed limit. FHWA proposes to add information in existing Section 2D.38 (new Section 2D.45) related to this new table.

The FHWA also proposes to revise the GUIDANCE to recommend that a pictograph used on a Street Name sign to identify a governmental jurisdiction or other government-approved institution should be positioned to the right, rather than the left, of the street name. The FHWA proposes this change because the name of the street is the primary message on the sign and the pictograph is secondary, and the primary message should be read first by being on the left. The FHWA proposes a phase-in compliance period of 15 years for the placement of the pictograph to the right of the street name sign for existing signs in good condition to minimize any impact on State or local highway agencies.

The FHWA also proposes to add new OPTION, STANDARD, and GUIDANCE statements regarding the use of alternative background colors for Street Name Signs where a highway agency determines that this is necessary to assist road users in determining jurisdictional authority for roads. The FHWA proposes that the only acceptable alternatives to green for the background color of Street Name signs shall be blue, brown, or black. The FHWA proposes these new statements because the MUTCD has not previously limited the alternate colors, and as a result, there is wide variation in practice among jurisdictions. Sometimes inappropriate colors are being used, because these are colors reserved for other traffic control device messages, or the colors used have poor contrast ratio between legend and background. The FHWA proposes a phase-in compliance period of 15 years for existing street name signs in good condition to minimize any impact on State or local highway agencies. The FHWA also proposes to add to the OPTION to specifically allow the border to be omitted on Street Name signs. The current text of this section implies, but does not specifically state, that the border may be omitted.

160. In existing Section 2D.39 (new Section 2D.46) Advance Street Name Signs, the FHWA proposes to add GUIDANCE statement and a reference to Figure 2C–14 that recommends the order in which street names should be displayed on an Advance Street Name plaque, in order to provide for improved consistency in this type of signing.

161. The FHWA proposes to relocate the information from existing Section 2E.49 to Chapter 2D to become a new section numbered and titled, ''Section 2D.47 Signing on Conventional Roads on Approaches to Interchanges.'' The FHWA proposes this change because the information in this section, and the associated figures, are about guide signing on conventional road approaches to a freeway, rather than signing on a freeway.

In this relocated section, the FHWA proposes to add a STANDARD statement to require, rather than merely recommend, that on multi-lane conventional road approaches to any freeway interchange, guide signs shall be provided to identify which direction of turn is to be made for ramp access and/or which specific lane to use to enter each direction of the freeway. This information is critical for drivers on a multi-lane approach to an interchange because it allows drivers to choose the proper lane in advance and reduces the need to make last-second lane changes close to the entrance ramp. The FHWA believes that the existing GUIDANCE statements are not strong enough for this very important need and that this signing needs to be mandatory. The FHWA proposes a phase-in compliance period of 10 years for existing locations to minimize any impact on State or local highway agencies.

162. The FHWA proposes to relocate the information from existing Section 2E.50 to Chapter 2D to become a new section numbered and titled, ''Section 2D.48 Freeway Entrance Signs.'' The FHWA proposes this change so that all signing on conventional roads at and in advance of interchanges with freeways is located in the same area of the Manual.

163. The FHWA proposes to add a new sign to existing Section 2D.40 (new Section 2D.49) and retitle the section, ''Parking Area or Parking Wayfinding Sign.'' The FHWA proposes to add this new sign, which is a vertical rectangle with a white letter P in a blue circle symbol at the top of the sign and a blue directional arrow at the bottom of the sign. This sign would be an alternative to the existing Parking Area directional sign and would give agencies a consistent parking guide sign to use in community wayfinding programs. This new sign is consistent with the widespread use of the blue background and white P as a parking wayfinding symbol throughout Europe and at many airports and institutional sites in the United States.

164. The FHWA proposes to relocate existing Sections 2D.42 Rest Area Signs, 2D.43 Scenic Area Signs, and 2D.45 General Service Signs to a new Chapter titled, ''Chapter 2F General Service Signs'' in order to combine information regarding similar type signs in to one area of the Manual.

165. The FHWA proposes to relocate existing Sections 2D.46 Reference Location Signs and Intermediate Reference Location Signs, 2D.47 Traffic Signal Speed Sign, 2D.48 General Information Signs, the first four paragraphs of 2D.49 Signing of Named Highways, and 2D.50 Trail Signs to a new Chapter titled, ''Chapter 2I General Information Signs.''

166. The FHWA proposes adding a new section numbered and titled ''Section 2D.52 Community Wayfinding Signs'' that contains SUPPORT, STANDARD, OPTION and GUIDANCE statements, as well as two new figures, regarding the use of community wayfinding guide signs to direct tourists and other road users to key civic, cultural, visitor, and recreational attractions and other destinations within a city or a local urbanized or downtown area. The remaining sections and figures in Chapter 2D would be renumbered accordingly.

Many of the cities currently using community wayfinding signs are using different colors, design layouts, fonts, and arrows, and many of these signs are not well designed to properly serve road users. The FHWA proposes to add this section to provide a uniform set of provisions for design and locations of

[73] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 47, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

these signs based on accepted sign design principles, to achieve consistency for road users. The FHWA proposes a phase-in compliance period of 15 years for existing signs in good condition to minimize any impact on State or local highway agencies.

167. The FHWA proposes to add two new sections numbered and titled, ''Section 2D.53 Truck, Passing, or Climbing Lane Signs'' and ''Section 2D.54 Slow Vehicle Turn-Out Sign.'' The FHWA proposes to add Section 2D.53 to be consistent with the proposed elimination of regulatory truck lane signs from existing Section 2B.32 (new Section 2B.39). These types of signs convey guidance information, rather than regulation.

The FHWA proposes Section 2D.54 based on the results of the Sign Synthesis Study,[74] which found that these signs are being used by a number of States. See also the discussion of this topic under Chapter 2B above. The FHWA also proposes to add a new Figure 2D–21 to illustrate these signs. The remaining sections and figures in Chapter 2D would be renumbered accordingly. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

Discussion of Proposed Amendments Within Chapter 2E

168. In section 2E.01 Scope of Freeway and Expressway Guide Sign Standards, the FHWA proposes to revise the STANDARD statement to clarify that Chapter 2E shall apply to any highway that meets the definition of freeway or expressway facilities. The FHWA proposes this revision to make it clear that not just the Standards, but also the Guidance and Option statements in Chapter 2E apply to freeway and expressway guide signs. This includes STANDARD, SUPPORT, AND OPTION statements that refer to Section 2A.11 Dimensions which clarifies the intended application of the standard sign designs in Table 2E–1.

169. The FHWA proposes to relocate existing Section 2E.24 Guide Sign Classification to appear earlier in the Chapter as Section 2E.03. The FHWA believes that guide sign classification should appear earlier in the chapter, because this section identifies the various groups of freeway/expressway guide signs by name. The remaining sections would be renumbered accordingly.

170. The FHWA proposes to relocate the existing text of existing Section 2E.08 Memorial Highway Signing to new Section 2I.07. The FHWA also proposes to add a new Section 2E.09 titled Signing of Named Highways with a SUPPORT statement to refer to new Sections 2D.55 and 2I.07, where appropriate information is provided about use of highway names on signing of unnumbered highways and memorial signing of routes, bridges, or highway components.

171. In existing Section 2E.09 (new Section 2E.10) Amount of Legend on Guide Signs, the FHWA proposes to add information to the existing GUIDANCE and OPTION statement, as well as to add a new STANDARD statement regarding the use of pictographs on freeway and expressway guide signs. This information is similar to that proposed in Section 2D.07 Amount of Legend, but maintains the distinct requirements for freeway/expressway lines of legend.

172. In existing Section 2E.18 (new Section 2E.19) Arrows for Interchange Guide Signs, the FHWA proposes to make several revisions to this section to clarify the use and design of arrows on guide signs. The FHWA proposes these changes to be consistent with proposed changes in Chapter 2D as discussed above regarding Section 2D.08. The FHWA proposes a phase-in compliance period of 15 years for existing signs in good condition to minimize any impact on State or local highway agencies.

173. The FHWA proposes significant changes to the first STANDARD and GUIDANCE statements in existing Section 2E.19 (new Section 2E.20) Diagrammatic Signs to specify a specific design for diagrammatic signs for multi-lane exits that have an optional exit lane that also carries the through road and for splits that include an optional lane. The proposed design features an upward arrow per lane and is consistent with the recommendations of the Older Driver handbook.[75] The FHWA believes that the up arrow per lane style of diagrammatic signs, including the appropriate use of EXIT ONLY sign panels, is the clearest and most effective method of displaying to road users the essential information about the proper and allowable lanes to use to reach their destinations with this ''option lane'' lane use for exits. The existing diagrammatic sign design that attempts to illustrate optional lane use via dotted lane lines on a single arrow shaft is too subtle to be easily recognized and understood by many road users, especially older drivers. A recent study[76] confirmed that the up arrow per lane diagrammatic design is significantly superior to the existing diagrammatic design or enhancements thereto in terms of providing a longer decision sight distance and higher rates of road user comprehension. Because of the nature of the combination of lane use and geometry, the FHWA believes that the proposed new type of diagrammatic signing should be mandatory for this type of exit. The FHWA also proposes to revise the 2nd STANDARD statement to require the use of diagrammatic signs at certain types of cloverleaf interchanges, where: (1) The outer (non-loop) exit ramp of a cloverleaf is a multi-lane exit having an optional exit lane that also carries the through route, and (2) a cloverleaf interchange that includes a collector-distributor roadway that is accessed from the main roadway by a multi-lane exit having an optional exit lane that also carries the through route. The FHWA proposes these changes for consistency with the general proposed change to require the proposed new style of diagrammatic signs for multi-lane exits that have an optional exit lane that also carries the through route and for splits that include an optional lane. The FHWA proposes a phase-in compliance period of 15 years for existing signs in good condition to minimize any impact on State or local highway agencies.

Finally, the FHWA proposes to add an OPTION statement at the end of the section to permit the use of an EXIT XX km/h (XX MPH) legend at the bottom of a diagrammatic sign to supplement, but not to replace, the exit or ramp advisory speed warning signs where extra emphasis of an especially low advisory ramp speed is needed. The Sign Synthesis Study[77] found that at least four States have found it necessary to use similar advisory speed panels with Exit Direction and/or diagrammatic guide signs to provide even more advance notice and emphasis of a very

[74] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 46, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[75] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May, 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendation II.A(3)

[76] ''Diagrammatic Sign Study—Preliminary Results,'' conducted by Gary Golembiewski and Bryan Katz for the Traffic Control Devices Pooled Fund Study, can be viewed at the following Internet Web site: *http://www.pooledfund.org/documents/TPF–5_065/PresDiagrammaticSigns.pdf.*

[77] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 51, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

low ramp speed, typically because of curvature.

174. In existing Section 2E.20 (new Section 2E.21) Signing for Interchange Lane Drops, the FHWA proposes to change the first GUIDANCE statement to a STANDARD statement to require the use of the EXIT ONLY (down arrow) sign panel on signing of lane drops on all overhead advance guide signs for exits that do not have an ''option lane,'' and to provide design requirements for the bottom portion of Exit Direction signs. The FHWA proposes these requirements to provide consistency with other proposed changes in the Manual, especially related to the use of arrows that are better understood by older drivers. The FHWA believes that, for freeway splits and other interchange configurations that include a lane drop but do not involve ''option lanes,'' the use of down arrows and EXIT ONLY sign panels over each lane on the advance guide signs is the clearest and most effective method of displaying to road users the essential information about the lane drop and about the proper lane(s) to use to reach their destinations. The FHWA also believes that the use of upward diagonal black arrows within an EXIT ONLY panel at the bottom of the Exit Direction signs for such interchanges more clearly reinforces the lane drop while still providing upward diagonal arrows in the direction of the exit. The FHWA proposes a phase-in compliance period of 15 years for existing signs in good condition to minimize any impact on State or local highway agencies.

175. The FHWA proposes to relocate the information from Section 2E.21 Changeable Message Signs to proposed new Chapter 2M, where all information on Changeable Message Signs would be consolidated. The remaining sections would be renumbered accordingly.

176. The FHWA proposes to relocate existing Section 2E.24 Guide Sign Classification to appear earlier in the Chapter as Section 2E.03. The FHWA believes that guide sign classification should appear earlier in the chapter because this section identifies the various groups of freeway/expressway guide signs by name. The remaining sections would be renumbered accordingly.

177. In existing Section 2E.28 (new Section 2E.27) Interchange Exit Numbering, the FHWA proposes to revise the 1st STANDARD statement to require that if suffix letters are used for exit numbering at a multi-exit interchange, the suffix letter shall be included on the exit number plaque and shall be separated from the exit number by a space having a width of at least half of the height of the suffix letter. The FHWA proposes this change in order to provide practitioners with more direction on the space between the exit number and the suffix than was previously provided in the MUTCD or the Standard Highway Signs and Markings book. This will enhance the legibility of the exit number and help avoid confusion.

In addition, the FHWA proposes to add a paragraph to the 1st STANDARD statement to make it clear that if suffix letters are used for exit numbering, an exit of the same number without a suffix letter cannot be used.

The FWHA also proposes to delete the Option statement and replace it with a new Standard stating that interchange exit numbering shall use the reference location exit numbering method and the consecutive exit numbering method shall not be used. The FHWA proposes this change because only 8 of the 50 States still use consecutive exit numbering and the vast majority of road users now expect reference location exit numbering. The FHWA believes that road users will be best served by nationwide uniformity of exit numbering using the reference location method.

The FHWA also proposes to change the 2nd paragraph of the first GUIDANCE statement to a STANDARD to require that a Left Exit Number (E1–5bP) plaque be used at the top left edge of the sign for numbered exits to the left to alert users that the exit is to the left, which is often not expected. This proposed change also requires that the ''LEFT'' message be black on a yellow background.

The FHWA proposes these changes for consistency of message to drivers and for consistency with other parts of the manual. The FHWA proposes a phase-in compliance period for the new requirements of new Section 2E.27 of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

178. In existing Section 2E.30 (new Section 2E.29) Advance Guide Signs and in existing Section 2E.33 (new Section 2E.32) Exit Direction Signs, the FHWA proposes to add a STANDARD statement to require that a Left Exit Number (E1–5bP) plaque be used at the top left edge of the sign for numbered exits to the left and that a LEFT (*E1–5aP*) plaque be added to the top left edge of the sign for non-numbered exits to the left. The FHWA proposes this new text to be consistent with the proposed changes in existing Section 2E.28 (new Section 2E.27). The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

The FHWA also proposes to change the first sentence of the OPTION statement to a GUIDANCE to recommend, rather than merely permit, that the word ''EXIT'' be omitted from the bottom line where interchange exit number plaques are used. The FHWA proposes this change in order to avoid duplication of the EXIT message on the exit number plaque and on the guide sign.

179. In existing Section 2E.33 (new Section 2E.32) Exit Direction Signs, the FHWA proposes to add requirements to the 2nd STANDARD statement regarding the use of diagrammatic signs and the use of plaques with these signs for left exits. The FHWA proposes this new text to be consistent with other proposed changes in the manual regarding diagrammatic signs and plaques for left exits. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

Finally, the FHWA proposes to add a paragraph to the last existing OPTION statement to permit the use of an EXIT XX km/h (XX MPH) legend at the bottom of the Exit Direction sign to supplement, but not to replace, the exit or ramp advisory speed warning signs where extra emphasis of an especially low advisory ramp speed is needed. This may be done by adding an EXIT XX km/h (XX MPH) sign panel to the face of the Exit Direction sign near the bottom of the sign or by making the EXIT XX km/h (XX MPH) message a part of the Exit Direction sign. The Sign Synthesis Study [78] found that at least four States have found it necessary to use similar advisory speed panels with Exit Direction signs to provide even more advance notice and emphasis of a very low ramp speed, typically because of curvature.

180. In existing Section 2E.34 (new Section 2E.33) Exit Gore Signs, the FHWA proposes to revise the STANDARD statement to clarify that the space between the exit number and the suffix letter on an Exit Gore Sign shall be the width of at least half of the height of the suffix letter. This proposed change correlates to a similar proposed change in existing Section 2E.28 (new Section 2E.27) Interchange Exit Numbering.

The FHWA also proposes to add a paragraph to the OPTION statement

[78] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 51, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

allowing the use of Type 1 object markers on sign supports below the Exit Gore sign to improve the visibility of the gore for exiting drivers. The FHWA proposes this change based on recommendations from the Older Driver handbook.[79]

Finally, the FHWA proposes to add an OPTION paragraph allowing the use of a vertical rectangular shaped Exit Gore sign for certain narrow gore areas, and an OPTION paragraph allowing the use of an Exit Number (E5–1bP) plaque above existing Exit Gore (E5–1) signs only when non-numbered exits are converted to numbered exits, and a STANDARD paragraph requiring the use of the Exit Gore (E5–1a) sign when replacement of existing assemblies of the E5–1 and E5–1bP signs becomes necessary. The FHWA proposes these changes to provide for more uniform design of Exit Gore signs.

181. In existing Section 2E.41 (new Section 2E.40), Freeway-to-Freeway Interchange, the FHWA proposes to add a STANDARD statement requiring the use the word ''LEFT'' at splits where the off-route movement is to the left, and the use of diagrammatic signs for freeway splits with an option lane and for multi-lane freeway-to-freeway exits having an option lane. The FHWA proposes these changes to be consistent with other proposed changes in the Manual. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

182. In Section 2E.45 (new Section 2E.44) Diamond Interchange, the FHWA proposes removing the second sentence of the first STANDARD statement regarding the prohibition of cardinal initials on exit numbers. This sentence is not applicable for a diamond interchange, because they have a single exit ramp. Existing Section 2E.28 (new Section 2E.27) Interchange Exit Numbering already contains a prohibition on the use of cardinal directions as the suffix of exit numbers.

183. The FHWA proposes to move the information from existing Section 2E.49 (new Section 2E.48) Signing on Conventional Road Approaches and Connecting Roadways to Section 2D.47, and leave a SUPPORT statement to refer readers to the appropriate section. The FHWA proposes this change because the section and figures are about guide signing on conventional road approaches to a freeway, and therefore, are more appropriate for Chapter 2D.

184. The FHWA proposes to move a majority of the information from existing Section 2E.50 (new Section 2E.49) Wrong-Way Traffic Control at Interchange Ramps to Section 2B.48, and leave a SUPPORT statement to refer readers to the appropriate section. The FHWA proposes this change because the section and figure relate more to regulatory signs than guide signs, and therefore, are more appropriate for Chapter 2B.

185. The FHWA proposes to relocate existing Sections 2E.51 General Service Signs, 2E.52 Rest and Scenic Area Signs, Section 2E.53 Tourist Information and Welcome Center Signs, Section 2E.56 Radio Information Signing, and 2E.57 Carpool and Rideshare Signing to a new Chapter titled, ''Chapter 2F General Service Signs.''

186. The FHWA proposes to relocate existing Sections 2E.54 Reference Location Signs and Enhanced Reference Location Signs and 2E.55 Miscellaneous Guide Signs to a new Chapter titled, ''Chapter 2I General Information Signs.''

187. The FHWA proposes to split existing Section 2E.59 into four sections and substantially edit the material. The resulting sections would be numbered and titled, ''Section 2E.51 Preferential Lane Guide Signs—General,'' ''Section 2E.52 Guide Signs for Initial Entry Points to Preferential Lanes,'' ''Section 2E.53 Guide Signs for Intermediate Entry Points to Preferential Lanes,'' and ''Section 2E.54 Guide Signs for Exits From Preferential Lanes to General Purpose Lanes or Directly to Another Highway.'' The FHWA proposes this reorganization of material to improve consistency and understanding by grouping like material together. In conjunction with these changes, the FHWA proposes a variety of changes in the technical provisions, sign designs, and figures for preferential lane guide signing, to reflect the state of practice and for enhanced sign conspicuity and legibility and to reflect recent FHWA policy guidance regarding traffic control devices for preferential lane facilities.[80] The FHWA also proposes new information in these sections to incorporate new provisions regarding managed lanes and lanes reserved only for vehicles equipped for Electronic Toll Collection, which are forms of preferential lanes. With the increasing use of these types of preferential lanes and the continuing emphasis on congestion management, the FHWA believes it is important for the state of the practice for signing of such lanes, based on recent policy and guidance document,[81] to be incorporated into the MUTCD to enhance signing uniformity. The remaining sections would be renumbered accordingly. The FHWA proposes a phase-in compliance period of 10 years for existing preferential lane signing in good condition to minimize any impact on State or local highway agencies.

188. The FHWA also proposes to add six new sections to Chapter 2E that describe the design and application of signs at conventional toll facilities and for ETC facilities. The proposed new sections are numbered and titled, ''Section 2E.55 Toll Facility and Toll Plaza Guide Signs—General,'' ''Section 2E.56 Advance Signs for Conventional Toll Plazas,'' ''Section 2E.57 Advance Signs for Toll Plazas on Diverging Alignments From Open Road ETC Only Lanes,'' ''Section 2E.58 Toll Plaza Canopy Signs,'' ''Section 2E.59 Guide Signs for Entrances to ETC-Only Facilities,'' and ''Section 2E.60 ETC Program Information Signs.'' The FHWA proposes these new sections and the associated text and figures to implement the recommendations of the Toll Plaza Best Practices and Recommendations report[82] and to reflect the state of the practice for electronic toll collection signing. The FHWA proposes a phase-in compliance period of 10 years for existing signs for toll facility and toll plaza signing to minimize any impact on State or local highway agencies.

As a part of these changes, the FHWA proposes to adopt new symbols to denote exact change and attended lanes, for use in toll plaza signing. The FHWA believes that symbols for these messages will help road users to more quickly identify the proper lane(s) to choose for the type of toll payment they will use. The proposed symbols are similar to those already in use for these purposes on some toll facilities in the U.S. as well as in Europe and Asia, and the FHWA also believes that such symbols will also aid in understanding by international travelers.

The FHWA also proposes a new symbol to be reserved for use when a toll facility's ETC payment system is nationally interoperable with all other ETC payment systems. Although such

[79] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May, 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendation II.A(4b).

[80] The FHWA's August 3, 2007 policy memorandum can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/policy/tcdpflmemo/preferen_lanes_tcd.pdf.*

[81] Available FHWA guidance and handbooks on preferential lanes and managed lanes can be viewed at the following Internet Web site: *http://ops.fhwa.dot.gov/freewaymgmt/hov.htm.*

[82] ''State of the Practice and Recommendations on Traffic Control Strategies at Toll Plazas,'' June 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/rpt/tcstoll/index.htm.*

national interoperability is not yet available, toll operators are actively working on developing interoperability so that, for example, an EZ-Pass transponder will work on a California toll facility's FasTrak ETC payment system. When this interoperability becomes available in the future, it will take a number of years thereafter for all toll operators to transition to it and, during that transition period, there will be a need for signing to indicate to road users that a particular toll facility's payment system is nationally interoperable. The FHWA believes that it is in the best interest of uniformity, safety, and road user convenience for a standard symbol to be adopted prior to the transition period so that it is available when needed.

189. Finally, the FHWA proposes a new section numbered and titled, ''Section 2E.61 Guide Signs for Managed Lanes'' to provide SUPPORT, STANDARD, and GUIDANCE information related to guide signing for managed lanes with operational strategies such as tolls, vehicle occupancy requirements, and vehicle type restrictions that are variable and put into effect on a real-time basis to respond to changing conditions. The FHWA proposes this new section and the associated material for consistency with other proposed provisions regarding signing for preferential lanes and electronic toll collection, and to reflect the state of the practice in managed lanes as documented in FHWA publications regarding managed lanes.[83] The FHWA proposes a phase-in compliance period of 10 years for the new provisions for guide signs for managed lanes to minimize any impact on State or local highway agencies.

Discussion of Proposed Amendments Within Chapters 2F Through 2M

190. The FHWA proposes to add a new chapter numbered and titled, ''Chapter 2F General Service Signs.'' This proposed new chapter contains several sections that the FHWA proposes to relocate from Chapters 2D and 2E in order to group similar sign types in the same area of the Manual.

191. The FHWA proposes to add a new section numbered and titled, ''Section 2F.01 Sizes of General Service Signs'' and a new Table 2F–1 to indicate the sizes of the General Service signs and plaques. Proposed Sections 2F.02 General Service Signs for Conventional Roads and 2F.03 General Service Signs for Freeways and Expressways contain information in existing Sections 2D.45 and 2E.51, respectively.

192. In existing Section 2E.51 (new Section 2F.03) the FHWA proposes to change the design of the D9–16 Truck Parking general services sign as illustrated in Figure 2F–1. A recent study[84] tested several symbols for this message and found that the message can be successfully symbolized. The FHWA proposes to adopt the symbol that was found to be the easiest to comprehend and which provides the greatest legibility distance. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

193. The FHWA proposes to add a new section numbered and titled, ''Section 2F.04 Interstate Oasis Signing'' that contains SUPPORT, OPTION, STANDARD, and GUIDANCE statements regarding signing for facilities that have been designated by the State within which they are located as having met the eligibility criteria of FHWA's Interstate Oasis Policy.[85] The language of this proposed new section is based on the signing provisions of the Interstate Oasis Policy. The FHWA also proposes the adoption of a unique symbol for use on separate Interstate Oasis signs in conjunction with the word message. Preliminary human factors testing indicates that the proposed symbol provides optimum comprehension, conspicuity, and legibility. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

194. The FHWA proposes to combine the text from existing Sections 2D.42, 2D.43 and 2E.52 to create a new section numbered and titled, ''Section 2F.05 Rest Area and Other Roadside Area Signs'' so that similar information is located all in one area.

In conjunction with this change, the FHWA proposes changes to the text that would be relocated from Sections 2D.42 and 2D.43 to clarify the types of signs to be used at Rest Areas and at Scenic and Other Roadside Areas. Existing Section 2D.42 can be misinterpreted as meaning that restrooms are required in order to use the Parking Area, Roadside Table, Roadside Park, and Picnic Area signs, which was not FHWA's intent. Restrooms are only required at locations designated as Rest Areas. The FHWA also proposes to change the accompanying figures, accordingly.

The FHWA proposes to add two paragraphs to the OPTION statement at the end of the section to allow the use of the telecommunications devices for the deaf (TDD) Symbol Sign and the wireless Internet services (Wi-Fi) Symbol Sign to supplement advance guide signs for rest areas if such amenities are available. The FHWA proposes to add the TDD symbol based on the results of the Sign Synthesis Study[86] that showed that several States are using a similar sign, and because this sign design is specified by the Americans With Disabilities Act for use to indicate facilities that are equipped with TDD. The FHWA proposes the Wi-Fi symbol sign because many rest areas are being equipped with wireless Internet service for road users visiting these areas and many States are using word message or symbol signs to indicate the availability of this service in the rest area. The FHWA believes that a uniform symbol is needed for this rapidly expanding signing practice and preliminary human factors testing[87] indicates that the proposed symbol provides optimum comprehension, conspicuity, and legibility. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

195. The FHWA proposes to relocate the information from existing Section 2E.53 to become new section 2F.06 Tourist Information and Welcome Center Signs. The FHWA proposes this change, because the material is more in keeping with the content of proposed Chapter 2F. Additionally, the FHWA proposes to revise the design of the D9–10 Tourist Information general service sign as illustrated in Figure 2F–1. A

[83] ''Managed Lanes—A Primer,'' FHWA publication number FHWA–HOP–05–031, can be viewed at the following Internet Web site: *http://www.ops.fhwa.dot.gov/publications/managelanes_primer/managed_lanes_primer.pdf* and ''Managed Lanes—A Cross-Cutting Study,'' FHWA report number FHWA–HOP–05–037, November, 2004, can be viewed at the following Internet Web site: *http://ops.fhwa.dot.gov/freewaymgmt/publications/managed_lanes/crosscuttingstudy/final3_05.pdf.*

[84] Preliminary results from ''Evaluation of Symbol Signs,'' conducted by Bryan Katz, Gene Hawkins, and Jason Kennedy for the Traffic Control Devices Pooled Fund Study, can be viewed at the following Internet Web site: *http://www.pooledfund.org/documents/TPF–5_065/PresSymbolSign.pdf.*

[85] FHWA's Interstate Oasis Policy, dated October 18, 2006, can be viewed at the following Internet Web site: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2006_register&docid=E6–17367.*

[86] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 48, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[87] Preliminary results from ''Evaluation of Symbol Signs,'' conducted by Bryan Katz, Gene Hawkins, and Jason Kennedy for the Traffic Control Devices Pooled Fund Study, can be viewed at the following Internet Web site: *http://www.pooledfund.org/documents/TPF–5_065/PresSymbolSign.pdf.*

recent study[88] found that the meaning of the existing ''question mark'' symbol for this service is poorly understood by road users. The abbreviation ''INFO'' was fully understood by 96 percent of the participants in the human factors testing. Further, the FHWA believes that the term INFO is understandable in most languages. Although the legibility distance of the tested version of ''INFO'' was less than that of the existing symbol, the FHWA proposes a design featuring larger and bolder letters to provide legibility that is expected to be comparable to the existing symbol.

196. The proposed new Section 2F.07 Radio Information Signing contains information from existing Section 2E.56. In the last OPTION statement, the FHWA proposes to revise the legend of the D12–4 sign to use the word ''CALL'' rather than ''DIAL'' to be consistent with the D12–2 and D12–5 signs, and to reflect current terminology.

197. The FHWA proposes to add a new section numbered and titled, ''Section 2F.08 TRAVEL INFO CALL 511 Sign'' that incorporates text from existing Section 2D.45 associated with this sign.

198. The FHWA proposes to relocate the information from existing Section 2E.57 to become new Section 2F.09 Carpool and Ridesharing Signing. The FHWA proposes this change, because this material is more in keeping with the content in proposed Chapter 2F.

199. The FHWA proposes to add two new sections at the end of the chapter numbered and titled, ''Section 2F.10 Brake Check Area Signs'' and ''Section 2F.11 Chain Up Area Signs.'' The FHWA proposes to add these new signs based on the results of the Sign Synthesis Study[89] that revealed that some States use signs for these specific purposes. Some States provide off-road areas (on the shoulder or in a physically separated rest area type of roadway) for drivers to install and remove tire chains during winter weather conditions. Some States also provide similar areas for trucks and other vehicles to check their brakes in advance of the start of a long downhill grade. The FHWA believes these types of areas are similar in some ways and could be considered motorist services and should be consistent in color and legend. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

200. The FHWA proposes to relocate the information from existing Section 2C.13 to become a new section numbered and titled, ''Section 2F.12 Truck Escape Ramp Signs.'' The FHWA proposes this change to clarify that these types of signs convey information on a form of motorist service (similar to rest areas, brake check areas, etc.), rather than warnings. The FHWA also proposes to relocate the illustrations of these signs from Chapter 2C to Chapter 2F and change the color scheme of the signs to white legend on a blue background. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

201. In existing Section 2F.02 (new Section 2G.02) Application, the FHWA proposes to revise the STANDARD statement to indicate that service types are allowed to appear on up to two signs, rather than just one. The FHWA proposes this change to reflect FHWA's Interim Approval (IA–9) to Display More than Six Specific Service Logo Panels for a Type of Service, dated September 21, 2006,[90] which allows for up to two specific service signs containing up to 12 logos for a given type of service. As part of this change, the FHWA proposes to add a paragraph to the GUIDANCE statement indicating that when a service type is displayed on two signs, the signs for that service type should follow one another in succession.

202. In existing Section 2F.03 (new Section 2G.03) Logos and Logo Sign Panels, the FHWA proposes to add to the GUIDANCE statement that the letter heights for word message logos should have the minimum letter heights stated in Section 2G.05. The FHWA proposes this change to recommend letter heights that provide enhanced legibility for older drivers.

The FHWA also proposes to add OPTION, STANDARD, GUIDANCE, and SUPPORT statements to this section regarding the use and design of supplemental messages within the logo sign panel. The FHWA proposes this new text to incorporate messages, such as DIESEL and 24 HOURS, that are helpful to road users. As part of this proposed change, the FHWA proposes to add a new symbol called the ''RV Friendly'' symbol that may be used by businesses that are designed with facilities to accommodate the on-site movement and parking of recreational vehicles. The proposed language was developed based on the conditions listed in Interim Approval IA–8, dated September 6, 2005,[91] as well as additional criteria deemed necessary, such as alternate RV Friendly symbol design and placement, and the need for an engineering study to demonstrate that a U-turn can be made by RVs, if U-turns are needed to access the RV Friendly site desiring to be signed as such.

As part of this proposed change, the FHWA proposes to include a new OPTION for the use of the supplemental message OASIS within the logo panel of a business that has been designated as an Interstate Oasis facility. The FHWA includes this proposed additional supplemental message to reflect the Interstate Oasis Program and Policy that was published in the **Federal Register** on October 18, 2002.[92]

Finally, the FHWA proposes to add OPTION and GUIDANCE statements at the end of the section regarding the use of dual logo panels (two smaller logos on the same panel) on Specific Service signs. The FHWA bases this proposal on the results of experimentation and research in Texas,[93] which found that mixing food and gas logos in a dual logo panel did not significantly impact the effectiveness. To minimize the potential for information overload and to maximize the legibility of specific service signs, the FHWA proposes that dual logos should be used on specific service signs only when the two businesses are under the same roof, all available logo panels are already in use, and there is no room for additional logos. The FHWA also proposes that dual logo panels be limited to two food businesses or one food and one gas business. The recommended maximum number of dual logo panels used on any one specific service sign is two.

The FHWA proposes a phase-in compliance period of 15 years for the new provisions of new Section 2G.03 for

[88] Preliminary results from ''Evaluation of Symbol Signs,'' conducted by Bryan Katz, Gene Hawkins, and Jason Kennedy for the Traffic Control Devices Pooled Fund Study, can be viewed at the following Internet Web site: *http://www.pooledfund.org/documents/TPF–5_065/PresSymbolSign.pdf.*

[89] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, pages 46–47, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[90] FHWA's Interim Approval IA–9, dated September 21, 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interim_approval/pdf/ia_9_logopanels.pdf.*

[91] Interim Approval IA–8 can be viewed at: *http://mutcd.fhwa.dot.gov/res-interim_approvals.htm.*

[92] The Interstate Oasis Program and Policy can be viewed at: *http://mutcd.fhwa.dot.gov/res-policy.htm.*

[93] ''Effects of Adding Dual-Logo Panels to Specific Service Signs: A Human Factors Study,'' by H. Gene Hawkins and Elisabeth R. Rose, 2005, published in Transportation Research Record number 1918, is available for purchase from the Transportation Research Board at the following internet Web site: *http://www.trb.org.* A brief summary of the research results can be viewed at the following Internet Web site: *http://pubsindex.trb.org/document/view/default.asp?lbid=772254.*

existing signs in good condition to minimize any impact on State or local highway agencies.

203. In existing Section 2F.04 (new Section 2G.04) Number and Size of Signs and Logo Sign Panels, the FHWA proposes to add OPTION and STANDARD statements to permit the use of, and provide the associated requirements for, additional logo sign panels of the same specific service type when more than six businesses of a specific service type are eligible for logo sign panels at the same interchange. The FHWA proposes to include this information, based on Interim Approval (IA–9) to Display More than Six Specific Service Logo Panels for a Type of Service, dated September 21, 2006.[94]

204. In existing Section 2F.05 (new Section 2G.05) Size of Lettering, the FHWA proposes to add standards for minimum letter heights for logo sign panels consisting only of word legends that are displayed on the mainlines of freeways and expressways and on conventional roads and ramps. The FHWA proposes these minimum letter heights to provide letter heights that will enhance legibility for older drivers. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

205. In existing Section 2F.08 (new Section 2G.08) Double-Exit Interchanges, the FHWA proposes to add a new GUIDANCE statement to recommend that where a service type is displayed on two Specific Service signs at a double-exit interchange, one of the signs should display the logo panels for the service type of the businesses that are accessible from one of the two exits and the other sign should display the logo panels for the service type of the businesses that are accessible from the other exit. The FHWA proposes this change to provide consistency in logo signing for double-exit interchanges when a service type is displayed on two signs.

206. The FHWA proposes to add a new section after existing Section 2F.08 (new Section 2G.08). The new section is numbered and titled, ''Section 2G.09 Specific Service Trailblazer Signs'' and contains SUPPORT, STANDARD, GUIDANCE, and OPTION statements regarding these guide signs that are required along crossroads for facilities that have logo panels displayed along the main roadway and ramp, and that require additional vehicle maneuvers to reach. The FHWA proposes this new section and an associated new figure to enhance the uniformity of this signing practice which is being used by many States.

207. In existing Section 2F.09 (new Section 2G.10) Signs at Intersections, the FHWA proposes to relocate the first paragraph of the existing OPTION statement to the 2nd STANDARD statement in order to clarify that the type of service and the action message or the directional arrow shall all be on the same line directly above the business logo panel or below the logo sign panel.

208. The FHWA proposes to add a new chapter numbered and titled, ''Chapter 2I General Information Signs.'' This proposed new chapter contains several sections that the FHWA proposes to relocate from Chapters 2D and 2E in order to group similar sign types in the same area of the Manual.

209. The FHWA proposes to add a new Section 2I.01 Sizes of General Information Signs and a new Table 2I–1 to indicate sizes of General Information signs. Proposed new Sections 2I.02 Reference Location Signs and Intermediate Reference Location Signs, 2I.03 Enhanced Reference Location Signs, 2I.04 Traffic Signal Speed Sign, 2I.05 General Information Signs, 2I.06 Miscellaneous Information Signs, 2I.07 Memorial Signing, and 2I.08 Trail Signs, contain information in existing Sections 2D.46, 2E.54, 2D.47, 2D.48, 2E.55, 2D.49 and 2D.50, respectively.

210. In existing Section 2D.47 (new Section 2I.04) Traffic Signal Speed Sign, the FHWA proposes to add a paragraph to the OPTION statement allowing a changeable message element for the numerals of the Traffic Signal Speed sign to be displayed if different system progression speeds are set for different times of the day. The FHWA also proposes to allow a blank-out version of the Traffic Signal Speed sign to be used to display the message only during the times when the system is operated in coordinated mode. The FHWA proposes this change to provide agencies with flexibility to provide for different speeds at different times of day. The FHWA also proposes to revise the STANDARD statement to increase the minimum size of the Traffic Signal Speed sign from 300×450 mm (12×18 in) to 600×900 mm (24×36 in) to provide for suitable letter sizes.

211. In existing Section 2E.55 (new Section 2I.06) the FHWA proposes to replace the phrase ''Miscellaneous Guide Signs'' with ''Miscellaneous Information Signs'' in the title, in the text of the section, and in the associated figure, to reflect the relocation of this section into proposed new Chapter 2I.

212. The FHWA proposes to add a new section numbered and titled, ''Section 2I.07 Memorial Signing.'' This proposed new section is comprised of text pertaining to memorial signs, which is relocated from existing sections 2D.49 and 2E.08. The FHWA proposes to revise several statements within the section in order to make the information in this section regarding memorial signing consistent with existing Section 2D.49 Signing of Named Highways (new Section 2D.55).

213. In existing Section 2D.50 (new Section 2I.08) Trail Signs, the FHWA proposes to add a STANDARD statement prohibiting the use of trail signs on freeways or expressways. The FHWA proposes this restriction because trail designations are not appropriate for freeways and expressways and should be confined to conventional roads.

214. The FHWA proposes to add a new section numbered and titled, ''Section 2I.09 Acknowledgement Signs.'' This proposed new section contains SUPPORT, GUIDANCE, STANDARD, and OPTION statements regarding the placement and design of the signs that can be used as a way of recognizing a company, business, or volunteer group that provides a highway-related service. The FHWA bases the proposed information on the policy memo ''Optional Use of Acknowledgment Signs on Highway Rights-of-Way,'' dated August 10, 2005.[95] The FHWA proposes a phase-in compliance period of 10 years for the new provisions for acknowledgement signs for existing signs in good condition to minimize any impact on State or local highway agencies.

215. In existing Section 2H.04 (new Section 2J.04) General Design Requirements for Recreational and Cultural Interest Area Symbol Guide Signs, the FHWA proposes to replace the entire set of recreational and cultural area symbol signs with a new, updated, and expanded set of signs, based on the National Park Service's updated Uniguide Standards Manual,[96] plus a few United States Forest Service standard symbol signs for activities not covered in the Uniguide standards. As a result, the FHWA proposes to revise existing Table 2H–1 (new Table 2J–1) to reflect the new set of signs, as well as

[94] FHWA's Interim Approval IA–9, dated September 21, 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interim_approval/pdf/ia_9_logopanels.pdf.*

[95] FHWA's Policy Memo can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/res-mem_ack.htm.*

[96] Information about the National Park Service's Uniguide Standards Manual can be obtained at the following Internet Web site: *http://www.nps.gov/hfc/acquisition/uniguide.htm.*

figures within Chapter 2I that show recreational and cultural signs. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

216. In existing Section 2H.07 (new Section 2J.07) Use of Prohibitive Slash, the FHWA proposes to clarify the STANDARD statement to indicate recreational and cultural interest area symbol signs for prohibited activities and items are only to be used within a recreational or cultural interest area when a standard regulatory sign for such a prohibition is not provided in Chapter 2B. The FHWA also proposes that for recreational and cultural interest area prohibitory signs only, the red diagonal slash is to be placed behind the symbol, rather than over it in, consistent with National Park Service standards.

217. In existing Section 2H.08 (new Section 2J.08) Placement of Recreational and Cultural Interest Area Symbol Signs, the FHWA proposes to add an OPTION statement allowing the symbol on the Wildlife Viewing Area sign to be placed to the left or right of the legend, and the arrow to be placed below the symbol. The FHWA proposes the new binoculars symbol to denote wildlife viewing areas based on the Sign Synthesis Study,[97] which revealed that several States and the National Park Service were already using this symbol in this manner to design an effective guide sign.

218. In existing Section 2H.09 (new Section 2J.09) Destination Guide Signs, the FHWA proposes to delete the first sentence of the 2nd STANDARD statement restricting the use of white on brown destination guide signs on linear parkway-type highways that primarily function as arterial connectors. This proposed change is the result of an amended memorandum of understanding that was signed in 2006 by the National Park Service and the FHWA.[98]

219. In existing Section 2I.03 (new Section 2K.03), Evacuation Route Signs, the FHWA proposes to reorganize the paragraphs to provide a more logical flow. The FHWA also proposes to include information in the first STANDARD statement regarding the design of the proposed Tsunami Evacuation Route sign. The FHWA bases the proposed design on a symbol currently being used in all Pacific Coast States.

The FHWA also proposes to clarify the use of Advance Turn Arrow (M5 series) and Directional Arrow (M6 series) auxiliary signs with Evacuation Route signs in the first STANDARD and OPTION statements.

220. In existing Section 2I.08 (new Section 2K.08) Emergency Aid Center Signs, the FHWA proposes to add an OPTION statement allowing the use of a fluorescent pink background color when Emergency Aid Center signs are used in an incident situation, such as during the aftermath of a nuclear or biological attack. The FHWA proposes this change, because EM–6 Series signs may be useful for incident situations.

221. In existing Section 2I.09 (new Section 2K.09) Shelter Directional Signs, the FHWA proposes to add an OPTION statement allowing the use of a fluorescent pink background color when Shelter Direction signs are used in an incident situation, such as during the aftermath of a nuclear or biological attack. The FHWA proposes this change, because EM–7 Series signs may be useful for incident situations.

222. The FHWA proposes to add a new chapter numbered and titled, ''Chapter 2L Object Markers, Barricades, and Gates.'' This proposed new chapter contains existing Sections 3C.01 through 3C.04, which are related to object markers and existing Section 3F.01 on barricades. The FHWA proposes this new chapter to group these devices in the same area of the Manual.

223. In existing Section 3C.02 (new Section 2L.02) Object Markers for Obstructions Within the Roadway, the FHWA proposes to add an OPTION statement to clarify that Type 1 or Type 3 markers may be installed on the nose of a median island at an intersection to provide additional emphasis. The FHWA proposes this new statement to clarify that the application is permitted.

224. In existing Section 3C.03 (new Section 2L.03) Object Markers for Obstructions Adjacent to the Roadway, the FHWA proposes to revise the STANDARD statement to specify that Type 2 or Type 3 object markers are to be used for obstructions not actually within the roadway and to restrict the use of Type 1 and Type 4 object markers for such applications.

225. In existing Section 3C.04 (new Section 2L.04) Object Markers for Ends of Roadways, the FHWA proposes to add to the first STANDARD statement that if an object marker is used to mark the end of a roadway, a Type 4 object marker shall be used. The FHWA proposes this change to provide clarity that the Type 4 object marker is the only type of object marker to be used to mark the end of a roadway.

226. The FHWA proposes adding a new Section 2L.06 Gates, containing provisions regarding the design and use of gates for a variety for traffic control purposes beyond the most common use at highway-rail grade crossings. The FHWA proposes this new section in order to provide for enhanced uniformity of gates, as they are used in a wide variety of applications.

227. The FHWA proposes to add a new Chapter numbered and titled, ''Chapter 2M Changeable Message Signs.'' This new chapter contains information from existing Sections 2A.07 and 2E.21 as well as additional new information, organized into seven sections regarding Changeable Message Signs, specifically regarding the description, application, legibility and visibility, design characteristics, message length and units of information, installation, and display of travel times on Changeable Message Signs. The FHWA proposes this change to consolidate all information about changeable message signs into one location in the Manual and to reflect the recommendations of extensive research on changeable message sign legibility, messaging, and operations conducted over a period of many years by the Texas Transportation Institute.[99] The FHWA proposes a phase-in compliance period of 10 years for the new provisions for Changeable Message Signs for existing signs in good condition to minimize any impact on State or local highway agencies.

Discussion of Proposed Amendments to Part 3—Pavement Markings

Discussion of Proposed Amendments Within Part 3—General

228. The FHWA proposes to remove references to the blue raised pavement marker from Part 3. Blue raised pavement markers have been used to mark the locations of fire hydrants for emergency response personnel and are not intended to communicate a traffic control message to the general public. Consistent with the proposed changes in Section 1A.08 as described in item 20 above, blue raised pavement markers would not be considered traffic control devices and therefore the FHWA believes that requirements for design and application of such markers should not be included in the MUTCD.

[97] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[98] This Memorandum of Understanding can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/res-policy.htm.*

[99] Information on the many research projects on changeable message signs conducted by the Texas Transportation Institute (TTI) can be accessed via TTI's Internet Web site at: *http://tti.tamu.edu/.*

229. The FHWA proposes to add information to allow the use of appropriate route shield pavement marking symbols (including appropriate colors) to assist in guiding road users to their destinations. The use of the red, white, and blue Interstate shield marking was authorized by FHWA in Official Interpretation # 3–162(I).[100] The FHWA also proposes to add a new figure to illustrate these route shield pavement markings.

230. In several sections within Part 3, the FHWA proposes to add new language to clarify that dotted lane lines, rather than broken lane lines, are to be used for non-continuing lanes, including acceleration lanes, deceleration lanes, auxiliary lanes, and lane drops. The FHWA also proposes to revise the various existing figures in Chapter 3B that illustrate these conditions to reflect the proposed changes. The FHWA proposes these changes to avoid confusing road users regarding the function of these lanes and to improve safety and operations. As documented in NCHRP Synthesis 356,[101] a number of States and other jurisdictions currently follow this practice, which is also the standard practice in Europe and most other developed countries. The FHWA believes that the existing use of a normal broken lane line for these non-continuing lanes does not adequately inform road users of the lack of lane continuity ahead and that standardized use of dotted lane lines for non-continuing lanes will better serve this important purpose in enhancing safety and uniformity.

231. The FHWA proposes to relocate Chapter 3C Object Markers and Section 3F.01 Barricades to Part 2 because readers of the MUTCD have difficulty finding object markers in the MUTCD and because most jurisdictions treat these devices as signs for purposes of inventory and policy. The FHWA proposes to place the information on object markers and barricades in a new Chapter titled, ''Chapter 2L Object Markers and Barricades.''

232. The FHWA proposes to add OPTION statements in various sections within Part 3 to allow use of retroreflective or internally illuminated raised pavement markers in the roadway immediately adjacent to curbed noses of raised medians and curbs of islands, or on top of such curbs. This is an effective practice commonly used to aid road users in identifying these channelizing features at night. The FHWA proposes this optional use based on recommendations from the Older Driver handbook.[102]

233. The FHWA proposes to include arrows in the list of items that are to be designed in accordance with the Pavement Markings chapter of the Standard Highway Signs and Markings book.

Discussion of Proposed Amendments Within Chapter 3A

234. In Section 3A.01 Functions and Limitations, the FHWA proposes relocating the last paragraph of the SUPPORT statement, which pertains to the general functions of longitudinal lines, to a STANDARD statement in Section 3A.05, because that section deals specifically with longitudinal pavement markings. See item 237 below for additional information.

235. In Section 3A.03 Materials, the FHWA proposes to add information to the SUPPORT statement regarding marking systems that consist of clumps or droplets of material with visible open spaces of bare pavement between the material droplets. The FHWA proposes this new text in order to clarify that this type of marking system is suitable for use if it meets other marking requirements of the highway agency. This also reflects FHWA's Official Interpretation #3–196(I), dated July 19, 2006.[103]

236. In Section 3A.04 Colors, the FHWA proposes to revise the 3rd paragraph of the STANDARD statement to include red delineators, for consistency with Chapter 3D and to clarify that the application of red raised pavement markers and delineators is for one-way roadways and ramps and for truck escape ramps, because red is not intended to be used for these devices on undivided highways, except in the special case of truck escape ramps as provided in existing Section 3D.03.

In addition, the FHWA proposes to add a new 6th paragraph to the STANDARD statement explaining the use of purple markings to supplement lane line or edge line markings for toll plaza approach lanes that are to be used only by vehicles that are equipped with ETC transponders. The FHWA proposes this new STANDARD paragraph to be consistent with other proposed changes in the MUTCD regarding the use of the color purple to readily identify lanes that are to be used by vehicles equipped with ETC transponders. (See item 23.)

237. In Section 3A.05, the FHWA proposes to change the title to ''Functions, Widths, and Patterns of Longitudinal Pavement Markings,'' and to incorporate into a STANDARD statement the information regarding the general function of longitudinal lines from the SUPPPORT statement in existing Section 3A.01. The FHWA proposes changing the classification of this text to a STANDARD for consistency with requirements in other sections in Part 3 and to appropriately reflect how this text has been applied.

The FHWA also proposes to change the OPTION statement regarding the lengths of line segments and gaps used for dotted lines to a GUIDANCE statement in order to encourage increased consistency in the dimensions for dotted lines based on their function. The recommended dimensions reflect the most common practice as documented in NCHRP Synthesis 356.[104]

238. The FHWA proposes to add a new section following Section 3A.05. The new section is numbered and titled, ''Section 3A.06 Definitions Relating to Pavement Markings'' and contains a STANDARD statement that defines the terms ''neutral area,'' ''physical gore,'' and ''theoretical gore.'' The FHWA proposes this new section to provide definitions of these terms, because they are used throughout Part 3 to describe the use and application of pavement markings.

Discussion of Proposed Amendments Within Chapter 3B

239. In Section 3B.01 Yellow Center Line Pavement Markings and Warrants, the FHWA proposes to add a paragraph to the 2nd STANDARD statement to specifically prohibit the use of a single solid yellow line as a center line marking on a two-way roadway. A single solid yellow center line marking has not been allowed by the MUTCD but some agencies have improperly used it because of the lack of a specific prohibition statement.

The FHWA also proposes to add a SUPPORT statement after the first

[100] FHWA's Official Interpretation #3–162(I), dated January 28, 2004, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/documents/pdf/3–162–I–VA–S.pdf.*

[101] NCHRP Synthesis 356, ''Pavement Markings—Design and Typical Layout Details,'' 2006, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_356.pdf.*

[102] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA-RD–01–051, May, 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendations #I.C(2), I.C(4f), and I.F(2).

[103] FHWA's Official Interpretation #3–196(I), dated July 19, 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/3_196.htm.*

[104] NCHRP Synthesis 356, ''Pavement Markings—Design and Typical Layout Details,'' 2006, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_356.pdf.*

GUIDANCE statement that references sections of the Uniform Vehicle Code that contain information regarding left turns across center line no-passing zone markings and paved medians. The information was contained in the 1988 MUTCD, and the lack of this information in the 2000 and 2003 editions of the MUTCD has generated the need to provide this in the next edition.

240. In Section 3B.02 No-Passing Zone Pavement Markings and Warrants, the FHWA proposes to add a paragraph to the first SUPPORT statement that describes that the values of passing sight distances shown in Table 3B–1 are for operational use in marking no-passing zones and are less than the values used for geometric design of highways. The FHWA proposes this in order to provide clarity and avoid confusion between operational use of markings and geometric design.

The FHWA also proposes to add language to the last paragraph of the 3rd STANDARD statement specifying that for this application a buffer zone shall be a flush median island formed by two sets of double yellow center line markings, in order to clarify how to appropriately mark a buffer zone and to correspond with the existing illustration in Figure 3B–5.

The FHWA also proposes to add an OPTION statement immediately following the 3rd STANDARD statement permitting the use of yellow diagonal markings in the neutral area between the two sets of no-passing zone markings, reflecting common practice for discouraging travel in that area.

241. In Section 3B.03 Other Yellow Longitudinal Pavement Markings, the FHWA proposes to change the first OPTION statement to a GUIDANCE in order to recommend for certain conditions, rather than just permit, the use of arrows with two-way left turn lanes. The FHWA proposes this change as a result of the NCHRP Synthesis 356 [105] which highlighted a variety of marking issues for which additional uniformity could be provided to aid road users. The synthesis found that the use of arrows in two-way left-turn lanes at the start of the lane and at other locations along the lane as needed is the predominant practice. The FHWA also reflects this proposed change in Figures that contain arrows in two-way left turn lanes.

242. In Section 3B.04 White Lane Line Pavement Markings and Warrants, the FHWA proposes to relocate the last GUIDANCE statement to become the first GUIDANCE statement (currently the last GUIDANCE statement) and to clarify that the lane line marking requirements do not apply to reversible lanes, for which the existing text of Part 3 requires the use a different color and pattern of markings.

The FHWA also proposes to add requirements to the STANDARD statement to specify that dotted lines are required for acceleration, deceleration, and auxiliary lanes. The FHWA proposes a phase-in compliance period of 5 years for existing pavement markings in good condition to minimize any impact on State or local highway agencies.

243. In Section 3B.05 Other White Longitudinal Pavement Markings, the FHWA proposes to revise the 3rd STANDARD statement to clarify the requirements for channelizing lines in gore areas alongside the ramp and through lanes for exit ramps and for entrance ramps. As part of this change, the FHWA proposes to change the first existing GUIDANCE statement to a STANDARD, to require, rather than recommend, the beginning and ending points of the channelizing lines, in order to improve uniformity in application and to reflect the predominant practice as documented in NCHRP Synthesis 356.[106] The FHWA proposes a phase-in compliance period of 5 years for existing pavement markings in good condition to minimize any impact on State or local highway agencies. The FHWA proposes to illustrate the proposed changes in Figure 3B–8.

The FHWA also proposes to add text to the 2nd OPTION statement permitting the use of white retroreflective or internally illuminated raised pavement markers to supplement channelizing lines and optional chevron markings at exit ramp and entrance ramps for enhanced nighttime visibility, to reflect recommendations from the Older Driver handbook.[107]

244. In Section 3B.07 Warrants for Use of Edge Lines, the FHWA proposes to add to the OPTION statement that if a bicycle lane is marked on the outside portion of a traveled way, the edge line that would mark the outside edge of the bicycle lane may be omitted, because the lane line separating the motor vehicle lane from the bicycle lane can serve the purpose of the edge line.

245. In Section 3B.08 Extensions Through Intersections or Interchanges, the FHWA proposes to revise the first GUIDANCE statement to add locations where offset left turn lanes might cause driver confusion to the listing of examples where dotted lines extensions should be used, to reflect recommendations from the Older Driver handbook.[108] FHWA also proposes to add dimensions of the line segments and gaps for the dotted line extension markings in order to provide consistency in the application and for consistency with the provisions of Section 3A.05.

246. In Section 3B.09 Lane-Reduction Transition Markings, the FHWA proposes to add an OPTION statement after the STANDARD statement that exempts agencies from the requirement to place edge lines and/or delineators along low-speed urban roadways where curbs clearly define the roadway edge in a lane reduction transition if supported by engineering judgment. The FHWA also proposes revising the 2nd paragraph of the 2nd GUIDANCE statement to reference the proposed exemption of low-speed roadways from the use of edge line markings. The FHWA proposes these changes because on low-speed urban roadways, curbs often provide adequate delineation of change of alignment of road edge.

The FHWA also proposes to revise the 2nd GUIDANCE statement to recommend that a dotted lane line be used approaching a lane reduction, consistent with the proposed use of dotted lane lines for other conditions in which a lane does not continue ahead. The FHWA proposes a phase-in compliance period of 5 years for existing pavement markings in good condition to minimize any impact on State or local highway agencies.

247. In Section 3B.10 Approach Markings for Obstructions, the FHWA proposes to revise the first STANDARD statement to clearly indicate that toll booths at toll plazas are fixed obstructions that shall be marked according to the requirements of this section. The FHWA proposes this change based on the recommendations

[105] NCHRP Synthesis 356, ''Pavement Markings—Design and Typical Layout Details,'' 2006, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_356.pdf*.

[106] NCHRP Synthesis 356, ''Pavement Markings—Design and Typical Layout Details,'' 2006, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_356.pdf*.

[107] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May, 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm*. Recommendation II.A(4a).

[108] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May, 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm*. Recommendation I.E(4d).

of the Toll Plazas Best Practices and Recommendations Report.[109]

In addition, the FHWA proposes to change the first OPTION statement to a GUIDANCE statement to recommend, rather than just permit, that where observed speeds exceed posted or statutory speed limits, longer tapers should be used. This is consistent with text already contained in the first GUIDANCE statement in Section 3B.09.

248. In Section 3B.11 Raised Pavement Markers, the FHWA proposes to modify the first STANDARD statement to specify that the height of a raised pavement marker is not to exceed approximately 25 mm (1 in) above the road surface, rather than specifying a minimum height, in order to clarify that tubular markers and other similar devices that might be placed on or in the roadway are not raised pavement markers.

The FHWA also proposes to add STANDARD and SUPPORT statements that clarify that internally illuminated raised pavement markers shall be steadily illuminated and shall not be flashed, and that flashing raised pavement markers are considered to be In-Roadway Lights, consistent with Part 4.

Additionally, the FHWA proposes to add a GUIDANCE statement near the end of the section that recommends consideration of the use of more closely spaced retroreflective pavement markers where additional emphasis is needed. This proposed statement incorporates FHWA Interpretation 3–176(I) [110] into the Manual and is consistent with recommendations from the Older Driver handbook.[111]

249. In Section 3B.12 Raised Pavement Markers as Vehicle Positioning Guides with Other Longitudinal Markings, the FHWA proposes to change the SUPPORT statement to a GUIDANCE in order to recommend, rather than just permit, that the spacing of raised pavement markers used as positioning guides for typical conditions should be 2N, where N equals the length of one line segment plus one gap. The FHWA proposes this change to reflect typical practice and to provide enhanced uniformity.

250. In Section 3B.13 Raised Pavement Markers Supplementing Other Markings, the FHWA also proposes to add a paragraph to the OPTION statement that provides for the use of supplemental retroreflective or internally illuminated raised pavement markers on horizontal curves to improve drivers' visibility of curves. The FHWA proposes this new text based on recommendations of the Older Driver handbook.[112]

251. In Section 3B.14 Raised Pavement Markers Substituting for Pavement Markings, the FHWA proposes to change the GUIDANCE statement to a STANDARD requiring that the color of raised pavement markers shall simulate the color of the markings for which they substitute, in order to assure uniformity of markings colors.

252. In Section 3B.15 Transverse Markings, the FHWA proposes to add arrows and speed reduction markings (which are proposed new types of markings, as discussed in item 257 below) to the list of transverse markings in the STANDARD statement that shall be white in order to provide clarity and provide uniformity in applications.

253. The FHWA proposes several changes to Section 3B.16 Stop and Yield Lines, as well as to Section 7C.04 Stop and Yield Signs (in Part 7 Traffic Controls for School Areas) to clarify the intended use of stop and yield lines. In Section 3B.16, the FHWA proposes to add requirements to the first STANDARD statement regarding the use of STOP and YIELD lines, specifically as they relate to locations where YIELD (R1–2) signs or Yield Here to Pedestrians (R1–5 or R1–5a) signs are used. The FHWA proposes these changes to assure that stop lines are not misused to indicate a yield condition or vice versa. The FHWA proposes a phase-in compliance period of 5 years for existing pavement markings in good condition to minimize any impact on State or local highway agencies. As part of the proposed changes, the FHWA proposes to require that stop lines shall not be used at locations on uncontrolled approaches where drivers are required by State law to yield to pedestrians. The FHWA proposes this change in accordance with FHWA's Official Interpretation #3–201(I), dated January 10, 2007.[113]

The FHWA also proposes to add a STANDARD statement that requires the use of Yield Here to Pedestrian (R1–5 and R1–5a) signs at a crosswalk that crosses an uncontrolled multi-lane approach when a yield line is used, for consistency with the existing requirement in existing Section 2B.11.

The FHWA proposes to add a GUIDANCE statement to clarify that Yield Lines and Yield Here to Pedestrian signs should not be used in advance of crosswalks that cross an approach or departure from a roundabout. The FHWA proposes this change because yield lines and signs for the crosswalk would be too close to the yield lines and signs at the entry to the circulatory roadway and could be confusing to road users.

The FHWA also proposes to add OPTION and SUPPORT statements that describe the use of staggered Stop and Yield lines. Longitudinally offsetting the stop lines and yield lines on a multi-lane approach is a common practice that improves drivers' view of pedestrians, improves sight distance for turning vehicles, and increases the turning radius for left-turning vehicles.

254. The FHWA proposes adding a new section following Section 3B.16 Stop and Yield Lines. The proposed new section is numbered and titled ''Section 3B.17 Do Not Block Intersection Markings'' and contains OPTION and STANDARD statements regarding use of markings to indicate that the intersection is not to be blocked. The remaining sections in Chapter 3B would be renumbered accordingly. Do Not Block Intersection Markings are being used more widely across the country to improve traffic flow through intersections. Uniformity in the use and type of markings is needed to minimize road user confusion. The FHWA proposes a phase-in compliance period of 5 years for existing pavement markings in good condition to minimize any impact on State or local highway agencies.

255. In existing Section 3B.17 (new Section 3B.18) Crosswalk Markings, the FHWA proposes adding a paragraph to the first GUIDANCE statement that recommends that crosswalk markings should be located so that the curb ramps are within the extension of the crosswalk markings, to be consistent with provisions in ADAAG [114] and to

[109] ''State of the Practice and Recommendations on Traffic Control Strategies at Toll Plazas,'' June 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/rpt/tcstoll/index.htm.*

[110] FHWA Official Interpretation #3–176(I), dated January 21, 2005, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/3_176.htm.*

[111] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendation III.A(2).

[112] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May, 2001 can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendation III.A(2).

[113] FHWA Official Interpretation #3–201(I), dated January 10, 2007, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/3_201.htm.*

[114] The Americans With Disabilities Accessibility Guidelines (ADAAG) can be viewed at the

provide more consistency for pedestrians as they negotiate the crosswalk and curb ramps.

The FHWA also proposes several additional changes to the first GUIDANCE statement to reflect the findings of FHWA report, ''Safety Effects of Marked versus Unmarked Crosswalks at Uncontrolled Locations.'' [115] The proposed changes include deleting some of the requirements for the specific placement of crosswalk markings and adding recommendations regarding the placement of crosswalk markings across uncontrolled approaches based on engineering judgment and engineering studies.

The FHWA also proposes to add a SUPPORT statement at the end of the section that incorporates information regarding detectable warning surfaces that mark boundaries between pedestrian and vehicular ways where there is no raised curb. The proposed language would be added to the Manual in response to requests from the U.S. Access Board, based on ADAAG.[116] There has been a notable amount of confusion among many highway agencies regarding the proper use of detectable warning surfaces and where to find the proper information.

256. In existing Section 3B.19 (new Section 3B.20), the FHWA proposes to incorporate the word ''arrow'' in several places in the section to reflect that, although arrows are often not thought of as symbols, the provisions of this section are intended to apply to arrows. As part of this change, the FHWA proposes to title the Section, ''Pavement Word, Symbol, and Arrow Markings.''

The FHWA also proposes to move the 2nd paragraph of the existing 2nd OPTION statement to a new GUIDANCE statement in order to recommend, rather than just permit, that the International Symbol of Accessibility parking space marking should be placed in each parking space designated for use by persons with disabilities, for consistency with the provisions of the Americans With Disabilities Act.

The FHWA also proposes to add a new GUIDANCE statement that describes the use and placement of lane-use arrows in lanes designated for the exclusive use of a turning movement and in turn bays, in lanes from which movements are allowed that are contrary to the normal rules of the road, and where opposing offset channelized left-turn lanes exist. The FHWA proposes this new language to reflect common practice and provide for increased uniformity, as highlighted in the NCHRP Synthesis 356.[117] The FHWA proposes a phase-in compliance period of 5 years for existing locations to minimize any impact on State or local highway agencies.

In addition, the FHWA proposes to add a GUIDANCE statement that recommends the use of ONLY word markings to supplement the required arrow markings where through lanes approaching an intersection become mandatory turn lanes. The FHWA proposes a phase-in compliance period of 5 years for existing locations to minimize any impact on State or local highway agencies.

The FHWA also proposes revising the existing 3rd GUIDANCE statement to add that where through lanes become mandatory turn or exit lanes, markings and signs should be placed well in advance of the turn or exit to provide additional advance warning to drivers. The FHWA proposes these changes to reflect the predominant practice, as documented by NCHRP Synthesis 356,[118] and to enhance safety at these potentially confusing locations.

The FHWA proposes to add a STANDARD statement near the end of the section to clarify that the ONLY word marking is not to be used for lanes with more than one movement. The FHWA proposes this change to prevent road user confusion.

Finally, the FHWA proposes to expand the existing 4th GUIDANCE statement to recommend that lane reduction arrow markings be used on roadways with a speed limit of 70 km/h (45 mph) or above, and to recommend that they be used on roadways with lower speed limits when determined to be appropriate based on engineering judgment. The existing MUTCD allows the use of lane reduction arrow markings in an OPTION statement, however, based on the information in NCHRP Synthesis 356 [119] the FHWA believes that, for enhanced safety, they should be recommended on high-speed roads in order to provide a clear indication that the lane reduction transition is occurring. The FHWA proposes a phase-in compliance period of 5 years for existing locations to minimize any impact on State or local highway agencies.

257. The FHWA proposes to add a new section following existing Section 3B.20 (new Section 3B.21). The new section is numbered and titled, ''Section 3B.22 Speed Reduction Markings'' and contains SUPPORT, STANDARD, and GUIDANCE statements regarding these proposed transverse markings that may be placed on the roadway within a lane in a pattern to give drivers the impression that their speed is increasing. The FHWA proposes this new section to reflect the Traffic Control Devices Pooled Fund Study on speed reduction markings,[120] which found that these markings can be effective in reducing speeds at certain locations, and to provide a standardized design for such markings in order to provide uniformity. The FHWA proposes a phase-in compliance period of 5 years for existing speed reduction pavement markings in good condition to minimize any impact on State or local highway agencies.

258. In existing Section 3B.22 (new Section 3B.24) Preferential Lane Word and Symbol Markings, the FHWA proposes to add information regarding markings to be used for ETC preferential lanes to the STANDARD statement, for consistency with other related proposed changes in Parts 2 and 3 regarding ETC only lanes. As a part of this change, the FHWA also proposes to add new GUIDANCE regarding the use of preferential lane symbol and word markings at key decision points on a preferential lane, to reflect a recent FHWA policy memorandum.[121] The FHWA proposes a phase-in compliance period of 5 years for existing locations to minimize any impact on State or local highway agencies.

259. The FHWA proposes to edit, expand, and reorganize existing Section 3B.23 (new Section 3B.25) Preferential

following Internet Web site: *http://www.access-board.gov/ada-aba/index.htm.*

[115] ''Safety Effects of Marked versus Unmarked Crosswalks at Uncontrolled Locations,'' FHWA report #HRT–04–100, Charles Zegeer, et al., September 2005, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/safety/pubs/04100/04100.pdf.*

[116] The Americans With Disabilities Accessibility Guidelines (ADAAG) can be viewed at the following Internet Web site: *http://www.access-board.gov/ada-aba/index.htm.*

[117] NCHRP Synthesis 356, ''Pavement Markings—Design and Typical Layout Details,'' 2006, pages 7–13, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_356.pdf.*

[118] NCHRP Synthesis 356, ''Pavement Markings—Design and Typical Layout Details,'' 2006, pages 6–7, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_356.pdf.*

[119] NCHRP Synthesis 356, ''Pavement Markings—Design and Typical Layout Details,'' 2006, page 32, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_356.pdf.*

[120] ''Pavement Markings for Speed Reduction,'' December 2004, prepared by Bryan J. Katz for the Traffic Control Devices Pooled Fund Study, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/safety/pubs/04100/04100.pdf.*

[121] The FHWA's August 3, 2007 policy memorandum on ''Traffic Control Devices for Preferential Lane Facilities'' can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/policy/tcdplfmemo/preferen_lanes_tcd.pdf.*

Lane Longitudinal Markings for Motor Vehicles. The proposed changes in this section correspond to comparable sections on preferential lanes in Chapters 2B and 2E. The resulting proposed changes in this section include expanding the first STANDARD statement to include longitudinal pavement markings for buffer-separated left-hand and right-hand side preferential lanes, and expanding the 2nd STANDARD statement to include markings for counter-flow preferential lanes on divided highways. The FHWA proposes a phase-in compliance period of 5 years for existing pavement markings in good condition to minimize any impact on State or local highway agencies. These proposed changes reflect typical existing practices for the marking of preferential lanes, as documented in various FHWA guidance and handbooks.[122]

The FHWA also proposes to add new GUIDANCE regarding the use of dotted line markings at direct exits from preferential lane facilities, to reduce the chances of unintended exit maneuvers, reflecting a recent FHWA policy memorandum.[123]

260. To illustrate the proposed changes to existing Section 3B.23 (new Section 3B.25), and to clarify their use, the FHWA proposes to add more examples to Figures 3B–31 through 3B–34 to show the required longitudinal markings for buffer-separated preferential lanes and counter-flow preferential lanes.

261. The FHWA proposes adding a new section following existing Section 3B.23 (new Section 3B.25). The proposed new section is numbered and titled ''Section 3B.26 Chevron and Diagonal Crosshatching Markings'' and contains OPTION, STANDARD, and GUIDANCE statements on the use of markings intended to discourage travel on certain paved areas. In this new section, the FHWA proposes to eliminate the optional use of diagonal markings in gore areas and require chevron markings because gores separate traffic flowing in the same direction and diagonal crosshatching is inappropriate for that condition. The FHWA proposes a phase-in compliance period of 5 years for existing pavement markings in good condition to minimize any impact on State or local highway agencies. The remaining sections in Chapter 3B would be renumbered accordingly.

262. The FHWA proposes deleting existing Section 3B.24 Markings for Roundabout Intersections and existing Section 3B.25 Markings for Other Circular Intersections because information from those sections has been edited and expanded, and is now included in proposed new Chapter 3C (see item 266 below).

263. In existing Section 3B.26 (new Section 3B.27) Speed Hump Markings, the FHWA proposes to revise the STANDARD to more clearly state that if speed hump markings are to be used on a speed hump or a speed table, the only markings that shall be used are those shown in Figures 3B.35 and 3B.36. Because the existing MUTCD language is not prescriptive, a wide variety of marking patterns are being used for speed humps and the FHWA believes that additional uniformity is needed to enhance safety. The FHWA proposes a phase-in compliance period of 5 years for existing pavement markings in good condition to minimize any impact on State or local highway agencies.

264. In existing Section 3B.27 (new Section 3B.28) Advance Speed Hump Markings, the FHWA proposes to revise STANDARD to more clearly specify that if advance speed hump markings are used, the only markings that shall be used are those shown in Fig 3B–37. Because the existing MUTCD language is not prescriptive, a wide variety of marking patterns are being used for advance speed hump markings and the FHWA believes that additional uniformity is needed to enhance safety. The FHWA proposes a phase-in compliance period of 5 years for existing pavement markings in good condition to minimize any impact on State or local highway agencies.

265. The FHWA proposes adding a new section following existing Section 3B.27 (new Section 3B.28). The new section is numbered and titled, ''Section 3B.29 Markings for Toll Plazas'' and contains SUPPORT, STANDARD, GUIDANCE, and OPTION statements for the use of pavement markings at toll plazas. The FHWA proposes this new section in the MUTCD to reflect the recommendations of the Toll Plazas Best Practices and Recommendations report[124] and to provide uniformity in pavement markings at toll plazas because toll plazas have not been included in previous editions of the MUTCD. The FHWA proposes a phase-in compliance period of 5 years for existing locations for the recommendations on the use of solid lane lines and the requirements for the design of optional purple markings in this new section.

Discussion of Proposed Amendments Within Chapters 3C through 3H

266. As discussed in item 231 above, the FHWA proposes to move object markers, contained in existing Chapter 3C, to Part 2. The FHWA proposes to title Chapter 3C, ''Roundabout Markings.'' This proposed new chapter contains 7 sections that describe pavement markings at roundabouts, including lane lines, edge lines, yield lines, crosswalk markings, and pavement word, arrow, and symbol markings. The chapter also includes a variety of proposed new figures that illustrate examples of markings for roundabouts of various geometric and lane-use configurations. The FHWA proposes these changes to reflect the state of the practice for roundabout markings, especially for multi-lane roundabouts, the safe and efficient operation of which necessitates specific markings to enable road users to choose the proper lane before entering the roundabout. The FHWA solicits comments on whether it is necessary for all the proposed new figures illustrating roundabout markings to be added to the MUTCD or whether some of those illustrations should be placed in other documents for reference, such as an updated version of the Roundabouts Guide. The FHWA proposes a phase-in compliance period of 5 years for changes from the existing requirements and guidance for existing pavement markings in good condition to minimize any impact on State or local highway agencies.

267. In Section 3D.03 Delineator Application, in the first STANDARD statement, the FHWA proposes to delete the exemption of routes that have substantial portions with large sections of tangent alignments from those locations where single delineators shall be provided on freeways and expressways. The FHWA proposes this change because the terms ''substantial portions'' and ''large sections'' cannot be adequately defined.

The FHWA also proposes to add a new STANDARD statement indicating that delineators on the left-hand side of a two-way roadway shall be white. This corresponds to the existing requirement that delineator color shall match the color of the edge line, but clarifies the

[122] Available FHWA guidance and handbooks on preferential lanes can be viewed at the following Internet Web site: *http://ops.fhwa.dot.gov/freewaymgmt/hov.htm.*

[123] The FHWA's August 3, 2007 policy memorandum on ''Traffic Control Devices for Preferential Lane Facilities'' can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/policy/tcdplfmemo/preferen_lanes_tcd.pdf.*

[124] ''State of the Practice and Recommendations on Traffic Control Strategies at Toll Plazas,'' June 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/rpt/tcstoll/index.htm.*

intent for this situation, which has been misinterpreted by some agencies.

Finally, the FHWA proposes to add a new paragraph to the first GUIDANCE statement to recommend that delineators should be used wherever guardrail or other longitudinal barriers are present in order to provide for consistency in application. Guardrail and barriers are typically close to the roadway and delineation on these features helps road users be aware of the potential to collide with them during conditions of darkness. The proposed new paragraph reflects existing common practice. The FHWA proposes a phase-in compliance period of 10 years for delineators on existing guardrail or existing longitudinal barriers to minimize any impact on State or local highway agencies.

268. In Section 3D.04 Delineator Placement and Spacing, the FHWA proposes adding an OPTION at the end of the section to allow delineators of an appropriate color to be mounted on the face of or on top of guardrails or other longitudinal barriers in a closely-spaced manner such that they form a continuous or nearly continuous ribbon of delineation. This OPTION is proposed because this application is becoming more widely used for special conditions and aids in improving safety and visibility.

269. The FHWA proposes several revisions to Chapter 3E Colored Pavements, Section 3E.01 General, in order to provide for a more logical flow, to better emphasize traffic control device and non-traffic control device colored pavements, and to reflect FHWA's Interpretation 3–169(I) [125] on non-retroreflective colored pavements. The resulting language classifies as a traffic control device any retroreflective colored pavement between crosswalk lines and non-retroreflective colored pavement between crosswalk lines that is intended to communicate a regulatory or warning message.

270. As discussed in item 231 above, the FHWA proposes to move the discussion of barricades to Part 2. As a result, the title of chapter 3F would be ''Channelizing Devices.''

271. In existing section 3F.02 (new Section 3F.01) Channelizing Devices, the FHWA proposes to modify the STANDARD statement so that it is consistent with Section 6F.59 Cones. Rather than repeating much of the information that is already contained in Section 6F.59, the FHWA proposes to delete the last four paragraphs of the STANDARD statement and replace them with a reference to the retroreflectivity requirements in Sections 6F.58 to 6F.60.

In addition, the FHWA proposes to add to the STANDARD statement that the color of the reflective bands on channelizing devices shall be white, except for bands on channelizing devices that are used to separate traffic flows in opposing directions, which shall be yellow. The FHWA proposes this change to correspond with the ''color code'' for markings.

272. In Section 3G.01 General (Chapter 3G Islands), the FHWA proposes to add the purpose of toll collection to the definition of island for traffic control purposes. The FHWA proposes this change because toll collection is a unique type of island.

273. In Section 3G.02 Approach-End Treatment, the FHWA proposes to change the first OPTION statement to a SUPPORT statement because bars and buttons projecting above the pavement surface in the neutral area between approach-end markings are not considered traffic control devices, and therefore are not regulated by the MUTCD. In concert with this change, the FHWA proposes to delete the last GUIDANCE statement and the first paragraph of the last OPTION statement.

274. In Section 3G.03 Island Marking Application, the FHWA proposes changing the 2nd paragraph of the STANDARD statement to a GUIDANCE statement because it is not always practical or necessary for a jurisdiction to include chevron or diagonal hatching in the triangular neutral area for all islands, especially small triangular channelizing islands at intersections.

275. The FHWA proposes adding a new section at the end of Chapter 3G. The proposed new section is numbered and titled ''Section 3G.07 Pedestrian Islands and Medians'' and contains SUPPORT statements on the purpose of pedestrian islands and medians as well as the placement of detectable warnings at curb ramps. The information proposed within this section is included in order to assist practitioners with meeting the provisions of ADAAG.[126]

276. The FHWA proposes to add a new Chapter at the end of Part 3. The proposed new chapter is numbered and titled, ''Chapter 3H Rumble Strip Markings'' and contains two sections that describe the use of marking in conjunction with longitudinal and transverse rumble strips. Rumble strips have been in use for many years and numerous agencies are considering increased usage as part of their strategic highway safety plans. The proposed chapter is intended to address the use of markings in combination with rumble strips.

Discussion of Proposed Amendments to Part 4 Highway Traffic Signals

Discussion of Proposed Amendments Within Part 4—General

277. The FHWA proposes to reorganize Part 4 to improve the continuity and flow of information regarding the application of highway traffic signals in the MUTCD. Various paragraphs and sections would be relocated throughout the part, and the proposed new organization is reflected in the descriptions below.

278. The FHWA proposes to replace the word ''shown'' when referring to signal indications with the word ''displayed'' throughout Part 4. The FHWA also proposes to remove several references to ''lenses'' being ''illuminated'' and replace these with references to ''signal indications'' being ''displayed.'' The FHWA proposes these changes to provide for consistency in terminology and because many newer signal optical units do not include lenses.

Discussion of Proposed Amendments Within Chapter 4A

279. In Section 4A.02 Definitions Relating to Highway Traffic Signals, the FHWA proposes to remove ''signals at toll plazas'' from the list of items that are not included as ''highway traffic signals'' in its definition. The FHWA proposes this change as a result of the recommendations in the Toll Plaza Best Practices and Recommendations Report [127] that indicated that signals at toll plazas have properties that are similar to some other special uses of highway traffic signals, and therefore should be included in the definition. Also, the FHWA is proposing to add a new Chapter 4K that provides for the application of highway traffic signals at toll plazas.

The FHWA also proposes to add definitions for ''Hybrid Signal'' and ''Pedestrian Hybrid Signal'' to provide clarity to the difference between normal traffic control signals and Pedestrian Hybrid Signals and Emergency Hybrid Signals, both of which are proposed for addition to the MUTCD in Part 4.

[125] FHWA's Official Interpretation 3–169(I), dated September 1, 2004, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/documents/pdf/3–169-I-FL-S.pdf.*

[126] The Americans With Disabilities Accessibility Guidelines (ADAAG) can be viewed at the following Internet Web site: *http://www.access-board.gov/ada-aba/index.htm.*

[127] ''State of the Practice and Recommendations on Traffic Control Strategies at Toll Plazas,'' June 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/rpt/tcstoll/index.htm.*

The FHWA proposes to add several items to the definition of ''Intersection,'' consistent with the proposed revised definition in Section 1A.12. The FHWA proposes to add that two roadways separated by 9 meters (30 feet) or more shall be separate intersections; however, if no stopping point is designated between the two roadways in the median, the two intersections and the median between them shall be one intersection. The FHWA also proposes to clarify that any part of any vehicle legally beyond a stopping point is legally in the intersection, and a vehicle will remain in the intersection until the rear of the vehicle has cleared the intersection or crosswalk. The FHWA proposes these changes to more clearly define an intersection with respect to roadways divided by a median, particularly as this relates to signal design and operation.

Additionally, the FHWA proposes to revise the definition for ''Permissive Mode'' to include flashing YELLOW ARROW and flashing RED ARROW indications for permissive phases, as well as circular green. The flashing YELLOW ARROW and flashing RED ARROW are described in more detail in subsequent items below.

Finally, the FHWA proposes to revise the definitions of ''Signal Face'' and ''Signal Head'' to clarify that a signal face is an assembly of one or more signal sections, and that a signal head is an assembly of one or more signal faces. The FHWA proposes this change to clarify the meanings because they are often misstated.

Discussion of Proposed Amendments Within Chapter 4B

280. In Section 4B.02 Basis of Installation or Removal of Traffic Control Signals, the FHWA proposes to change the OPTION statement (with the exception of the last sentence of item E) to a GUIDANCE to recommend the steps that should be taken to remove a traffic control signal from operation, rather than merely permit steps to be taken. As part of this proposed change, the FHWA proposes to remove the suggested sign legend ''TRAFFIC SIGNAL UNDER STUDY FOR REMOVAL'' from item C, because the legend for this sign should be based on applicable circumstances for the individual intersection, and therefore a standard message should not be included in the MUTCD.

The FHWA proposes to add to the remaining OPTION statement that only items A and B of the GUIDANCE statement need to be completed for temporary traffic control signals, because items C through E do not apply to those locations. The FHWA also adds to the remaining OPTION statement that controller cabinets may remain in place after removal of traffic signal heads if the jurisdiction desires to continue analysis of the traffic signal removal.

281. In Section 4B.04 Alternatives to Traffic Control Signals, the FHWA proposes to add two items to the list of less restrictive alternatives that should be considered before a traffic control signal is installed. Proposed item H discusses revising the geometrics at the intersection to add pedestrian median refuge islands and/or curb extensions. Proposed item L discusses the use of a pedestrian hybrid signal or in-roadway warning lights if pedestrian safety is a major concern at a location. The remaining items would be renumbered accordingly. The FHWA proposes adding these items because they are viable potential alternatives to a new traffic control signal.

282. In Section 4B.05 Adequate Roadway Capacity, the FHWA proposes adding a paragraph to the GUIDANCE statement clarifying that additional methods for increasing roadway capacity that do not involve widening a signalized intersection should be carefully evaluated. Such methods could include revising pavement markings and lane-use assignments where appropriate. The FHWA proposes this change to clarify that lower-cost options should be considered to increase roadway capacity and operational efficiency at signalized intersections.

Discussion of Proposed Amendments Within Chapter 4C

283. In Section 4C.01 Studies and Factors for Justifying Traffic Control Signals, the FHWA proposes adding a new Warrant 9, ''Intersection Near a Highway-Rail Grade Crossing'' to the list of warrants. This proposed warrant is described in more detail in item 287 below.

The FHWA proposes adding a second paragraph to the first OPTION statement allowing any four sequential 15-minute periods to be considered as 1 hour in signal warrants that require conditions to be present for a certain number of hours in order to be satisfied, if the separate 1-hour periods used in the analysis do not overlap each other and both the major and minor street volumes are for the same specific 1-hour periods. The FHWA proposes this change to clarify that the 1-hour periods of peak traffic volumes may not necessarily correspond to 60 minutes starting at the :00 hour on the clock.

284. In Section 4C.04 Warrant 3, Peak Hour, the FHWA proposes adding to the OPTION statement that a traffic signal justified only under this warrant may be operated in flash-mode during the hours when the warrant is not met. The FHWA also proposes a GUIDANCE statement recommending that the signal be traffic-actuated. The FHWA proposes a phase-in compliance period of 15 years for this GUIDANCE statement for existing signals in good condition to minimize any impact on State or local highway agencies. The FHWA proposes these changes to encourage efficient operational strategies, because a traffic signal justified only under the Peak Hour warrant may have very low traffic volumes during much of the day. This language is similar to existing provisions in Sections 4C.05 (Pedestrian Volume Warrant) and 4C.06 (School Crossing Warrant).

285. In Section 4C.05 Warrant 4, Pedestrian Volume, the FHWA proposes to change in the STANDARD the criteria that are to be met in an engineering study for a traffic signal to be considered. The FHWA proposes to replace the existing two criteria with two new criteria based on vehicular and pedestrian volumes, and to require that only one of the criteria be met. The proposed criteria, and the associated volume curves, are derived from other vehicle-based traffic signal warrants and supplemented with data gathered during a TCRP/NCHRP study.[128] Similar to other traffic signal warrants, the FHWA proposes to add an OPTION statement following the criteria, allowing the use of different volume curves based on the posted or statutory speed limit or the 85th-percentile speed, or the location of the intersection. The FHWA also proposes to revise the OPTION to reduce the required pedestrian volumes for this warrant by as much as 50 percent if the 15th-percentile crossing speed of pedestrians is less than 1.1 m/sec (3.5 ft/sec). The FHWA proposes these changes to reflect the recommendations of the joint TCRP/NCHRP study that adjustments are needed in the existing pedestrian volume warrant. The net effect of the proposed revisions is as follows: (a) The pedestrian warrant will be slightly easier to meet with lower pedestrian volumes on streets with high vehicle volumes, and (b) the pedestrian warrant will be slightly more difficult to meet on streets with low vehicle volumes.

286. In Section 4C.05 Warrant 4, Pedestrian Volume, and Section 4C.06 Warrant 5, School Crossing, the FHWA

[128] ''Improving Pedestrian Safety at Unsignalized Pedestrian Crossings,'' TCRP Report 112/NCHRP Report 562, Transportation Research Board, 2006, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_562.pdf.*

proposes adding recommendations to the GUIDANCE statement that a traffic signal installed based on the pedestrian warrant or school crossing warrant only should also control the side street or driveway. When a traffic control signal is installed at an intersection with stop signs on the minor street to assist pedestrians in crossing the major street, minor street traffic can cross and turn left into the major street after stopping during the display of the green on the major street. This violates driver expectancies and compromises the meaning and effectiveness of the green signal indication. The FHWA believes that, even if the volume of traffic on the minor street is low when a signal is justified based on Warrant 4, it is in the best interest of traffic safety that the minor street be signalized also rather than stop sign controlled. The FHWA proposes a phase-in compliance period of 15 years for existing signals in good condition to minimize any impact on State or local highway agencies.

287. The FHWA proposes adding a new section following Section 4C.09. The proposed new section is numbered and titled ''Section 4C.10 Warrant 9, Intersection Near a Highway-Rail Grade Crossing'' and contains SUPPORT, STANDARD, GUIDANCE and OPTION statements describing the new warrant, which is intended for use in locations where none of the other eight signal warrants are met, but the proximity of the intersection to a highway-rail grade crossing is the principal reason to consider installing a traffic control signal. The FHWA proposes adding this new warrant, because some stop-controlled approaches to intersections near highway-rail grade crossings contain a stop line, which is closer to the track than the length of a large vehicle, and sight distances may preclude the vehicle from waiting on the approach side of the grade crossing before entering the intersection. Many of these intersections do not meet one of the other warrants in the MUTCD because those warrants use minimum volume thresholds for considering the installation of a traffic signal and not the proximity of a highway-rail grade crossing. The proposed warrant is based on recommendations from an NCHRP research project.[129]

[129] Information about ''Highway Traffic Signal Warrant for Intersections Near Highway-Rail Grade Crossings,'' NCHRP Project 03–76A, can be viewed at the following Internet Web site: *http://www.trb.org/trbnet/projectdisplay.asp?projectid=830.*

Discussion of Proposed Amendments Within Chapter 4D—General

288. The FHWA proposes a significant reorganization of Chapter 4D so that similar subjects are grouped together in adjacent sections, or combined into single sections within the Chapter. In addition, the FHWA proposes to add the use of flashing yellow and flashing red arrows in Part 4, which affects many sections within Chapter 4D.

289. The FHWA also proposes to add the use of a flashing yellow arrow indication as an optional alternative to a circular green for permissive left-turn and right-turn movements throughout Part 4, which affects many sections within Chapter 4D. The proposed text throughout Chapter 4D incorporates Interim Approval IA–10, dated March 20, 2006, for flashing yellow arrows during permissive turn intervals.[130] The Interim Approval and the subsequent proposed text in the MUTCD are based on research contained in NCHRP Report 493.[131] The research found that the flashing yellow arrow is the best overall alternative to the circular green as the permissive signal display for a left-turn movement, has a high level of understanding and correct response by left-turn drivers and a lower fail-critical rate than the circular green, and the flashing yellow arrow display in a separate signal face for the left-turn movement offers more versatility in field application. It is capable of being operated in any of the various modes of left-turn operation by time of day, and is easily programmed to avoid the ''yellow trap'' associated with some permissive turns at the end of the circular green display. The application of flashing yellow arrow indications for right-turn movements is a logical extension of use for left-turns and will provide jurisdictions with a useful tool to effectively control a wide variety of situations involving right turns.

290. The FHWA also proposes to add information in several places in this chapter regarding the use of U-turn arrow indications to reflect the increasing use of U-turn arrows.

[130] FHWA's Interim Approval #IA–10, dated March 20, 2006, can be found at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interim_approval/pdf/ia-10_flashyellarrow.pdf.*

[131] NCHRP Report 493, ''Evaluation of Traffic Signal Displays for Protected/ Permissive Left-Turn Control,'' 2003, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_493.pdf.*

Discussion of Proposed Amendments Within Chapter 4D—Specific

291. In Section 4D.01 General, the FHWA proposes to add a SUPPORT statement between the first and second paragraphs of the STANDARD statement to clarify the meaning of a seasonal shutdown. The FHWA proposes to add this information to incorporate clarifications into the MUTCD per Official Interpretation #4–288, dated April 27, 2005.[132]

The FHWA proposes to relocate a paragraph regarding coordination of traffic control signals within 800 m (0.5 mi) of one another from existing Section 4D.14 and add it to the GUIDANCE statement. The FHWA also proposes to add that coordination for such traffic signals should be considered where a jurisdictional boundary or a boundary between different signal systems falls in between them. The FHWA proposes this change to encourage jurisdictions to coordinate traffic signal timing plans across jurisdictional or system boundaries. In concert with this proposed change, the FHWA proposes to add a new SUPPORT statement at the end of this section that contains information regarding traffic signal coordination that was previously in Section 4D.14.

292. In Section 4D.03 Provisions for Pedestrians, the FHWA proposes to change the OPTION statement to a GUIDANCE to recommend, rather than merely permit, the use of No Pedestrian Crossing signs at traffic control signal locations where it is necessary or desirable to prohibit certain pedestrian movements, where such movements are not physically prevented by other means. The FHWA proposes this change because if the pedestrian movement is to be prohibited, a prohibitory sign should be used.

293. The FHWA proposes to relocate and retitle existing Section 4D.18 to ''Section 4D.04 Signal Indications—Design, Illumination, Color, and Shape.'' The FHWA proposes to revise the first STANDARD statement, which states that letters or numbers shall not be displayed as part of a vehicular signal indication. The FHWA proposes to specifically prohibit vehicular countdown displays because countdown indications on vehicular signal indications and similar methods of attempting to indicate a ''pre-yellow'' warning, such as a flashing green interval, have been found to lengthen

[132] FHWA's Official Interpretation 4–288, dated April 27, 2005, can be found at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/pdf/4_288.pdf.*

the ''dilemma zone'' and thereby result in increased crash rates.[133]

The FHWA also proposes to provide an exception to the prohibition on lettering for toll plaza signals (which is proposed for addition to the MUTCD, see item 347 below) because the Toll Plaza Best Practices and Recommendations Report [134] indicates that lettered messages on toll plaza signals are useful for toll operations and, with the extremely low speeds in a toll plaza stopped lane environment, such messages do not significantly detract from the signal indications.

The FHWA also proposes to add in the first STANDARD statement that strobes or other flashing displays within or adjacent to red signal indications shall not be used. The FHWA proposes this change to clarify that strobes within traffic signals are not approved traffic control devices and to be consistent with FHWA Official Interpretation 4–263.[135] Although FHWA allowed experimentation with strobes in red traffic signals in the mid-1980s, the FHWA made a determination in 1990 not to approve any further experimentations with strobe lights in traffic signals, and to terminate all then-current experimentations with these devices. As stated in the Official Interpretation, research conducted as part of the experimentation process showed inconsistent benefits and some significant disbenefits to the use of strobes and similar flashing displays. Any strobes operating within red traffic signals are not in accordance with the MUTCD and they are not under any approved experimentation. The FHWA proposes a phase-in compliance period of 5 years for removing strobes from existing locations to minimize any impact on State or local highway agencies.

Finally, the FHWA proposes to relocate information regarding arrows from existing Section 4D.16 to the first STANDARD statement, and to add an item D to require that U-turn arrows, if used, be pointed in a manner that directs the driver through the turn. The FHWA proposes this change in order to provide U-turn signal arrow indications for use on signalized approaches where left turns are prohibited or not physically possible but U-turns are allowed and need to be positively controlled with a protected signal phase. In such cases, left-turn arrows are not appropriate.

294. To better organize the information by subject matter, and to add clarity, the FHWA proposes to add several sections following Section 4D.04. The proposed new sections are numbered and titled ''Section 4D.05 Size of Vehicular Signal Indications,'' ''Section 4D.06 Positions of Signal Indications Within a Signal Face—General,'' ''Section 4D.07 Positions of Signal Indications Within a Vertical Signal Face,'' and ''Section 4D.08 Positions of Signal Indications Within a Horizontal Signal Face.'' Much of the information in these proposed new sections is contained in existing sections within Chapter 4D, but the text is revised to pertain to the subject of each particular section. Significant additional changes to the sections are described in items 295 and 296 below.

295. In new Section 4D.05 Size of Vehicular Signal Indications, the FHWA proposes modifying the STANDARD to require 300 mm (12 in) signal indications for all new signal installations. As part of this proposed change, the FHWA proposes to allow existing 200 mm (8 in) signal indications to be retained for the remainder of their useful life, to minimize any impact on State or local highway agencies. The FHWA proposes to revise the following OPTION statement to allow the use of 200 mm (8 in) signal indications under three specific circumstances where such use could be advantageous. The FHWA proposes these changes to reflect the predominant current signal design practice, to reflect the results of studies [136] that have shown the significant safety benefits of using 300 mm (12 in) indications, and to make signal indications more visible to elderly drivers.

296. In Section 4D.06 Positions of Signal Indications Within a Signal Face—General, the FHWA proposes adding to the STANDARD statement that unless otherwise stated for a particular application, if a vertical signal face contains a cluster(s), the face shall have at least three vertical positions. The FHWA proposes this change because road users who are color vision deficient identify the illuminated color by its position relative to the other signal sections.

The FHWA also proposes to add requirements to the STANDARD statement for the position of U-turn arrow signal sections in a signal face. The FHWA proposes this change to accommodate the new U-turn arrows as described previously in item 290.

297. The FHWA also proposes adding several new figures that illustrate positioning and arrangements of signal sections in left turn signal faces (Figures 4D–5 to 4D–11) and right turn signal faces (Figures 4D–12 to 4D–17). The FHWA proposes these new figures in order to enhance understanding and correct application of the relatively complex requirements and options for turn signals.

298. In existing Section 4D.04 (new Section 4D.09) Meaning of Vehicular Signal Indications, the FHWA proposes to add to item A(1) of the STANDARD statement a requirement that vehicular traffic turning left yield the right-of-way to other vehicles approaching from the opposite direction so closely as to constitute an immediate hazard. The FHWA proposes this change to conform the MUTCD to the Uniform Vehicle Code and to laws in many States.

The FHWA also proposes to separate existing item B(1) of the STANDARD statement into two items to more clearly indicate the meaning of a steady circular yellow and a steady yellow arrow to vehicular traffic. As part of this change, the FHWA proposes to add that a steady circular yellow signal indication warns that the related flashing arrow movement is being terminated. The FHWA proposes this change to provide consistency with the proposed addition of the applications of flashing yellow arrows and flashing red arrows.

The FHWA proposes to revise item C(1) of the STANDARD statement to clarify that where permitted, vehicles making a right turn or a left turn from a one-way street onto another one-way street when a steady circular red indication is displayed shall be governed by the rules applicable to making a stop at a STOP sign. The FHWA proposes this change to clarify the right of way rules for turning after stopping on a circular red indication. The FHWA also proposes a revision to item C(2) related to a steady red arrow signal indication that is similar in nature but reflects the different

[133] ''Safety Evaluation of a Flashing-Green Light in a Traffic Signal,'' by D. Mahalel and D.M. Zaidel, Traffic Engineering + Control magazine, February, 1985, pages 79–81, is available for purchase from Hemming Information Services, 32 Vauxhall Bridge Road, London, SW1V 2SS, England, Web site: *http://www.tecmagazine.com/*.

[134] ''State of the Practice and Recommendations on Traffic Control Strategies at Toll Plazas,'' June 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/rpt/tcstoll/index.htm*.

[135] FHWA's Official Interpretation 4–263, dated July 2, 2003, can be found at the following Internet Web site: *http://mutcd.fhwa.dot.gov/documents/pdf/4–263-I-FL-s.pdf*.

[136] These studies are summarized and documented in the FHWA report ''Making Intersections Safer: A Toolbox of Engineering Countermeasures to reduce Red-Light Running,'' pages 22–23, which can be viewed at the following Internet Web site: *http://safety.fhwa.dot.gov/intersections/docs/rlrbook.pdf* and in ''Signalized Intersections: Informational Guide'', FHWA publication number FHWA–HRT–04–091, August 2004, page 283, which can be viewed at the following Internet Web site: *http://www.tfhrc.gov/safety/pubs/04091/*.

requirements for turning on a red arrows versus on a circular red.

The FHWA proposes to delete the information from existing item D of the STANDARD statement and instead describe the meanings of flashing yellow signal indications in a new item E and flashing red signal indications in a new item F to more specifically clarify their meanings to vehicular traffic, to pedestrians, and when displayed as a beacon. The FHWA proposes to state in new item D that a flashing green indication has no meaning and shall not be used.

In new item E of the STANDARD statement, the FHWA proposes to add an item 2 that describes the use of flashing yellow arrow indications for permissive turning movements in the direction of the arrow. The FHWA proposes this change to allow agencies to use the flashing yellow arrow, as an option to the steady circular green indication, for intersections with permitted turning phases. The effectiveness of the flashing yellow arrow for this purpose has been demonstrated as reported in NCHRP Report 493.[137]

299. In existing Section 4D.05 (new Section 4D.10) Application of Steady Signal Indications, the FHWA proposes to modify item A(2) in the first STANDARD to exclude the use of a circular red signal indication with a green arrow indication when it is physically impossible for traffic to go straight through the intersection, such as on the stem of a T-intersection. The FHWA proposes this change to provide for additional consistency and uniformity of signal displays for the stems of T-intersections.

The FHWA proposes to modify item E(3) in the first STANDARD to permit the use of a steady yellow arrow indication to terminate a flashing yellow arrow or a flashing left-turn red arrow controlling a permissive left-turn phase. The FHWA proposes this change to provide consistency with the proposed addition of the flashing yellow arrow indication for permissive left turns. As documented in NCHRP Report 493,[138] the steady yellow arrow was found to be successful as the change interval display following the flashing yellow arrow permissive interval. A subsequent study by the University of Wisconsin[139] found no evidence to suggest that the flashing yellow arrow permissive indication negatively affects drivers' understanding of the steady yellow change interval indication. No problems with this display have been reported to FHWA by the dozens of highway agencies that have implemented the flashing yellow arrow at several hundred intersections under experimentation or interim approval.

The FHWA proposes to add new STANDARD and GUIDANCE statements at the end of this section that contain new material related to the proposed addition of the flashing yellow arrow and flashing left-turn red arrow, as well as information previously contained in portions of existing Sections 4D.08 and 4D.09, along with minor edits.

In addition, the FHWA proposes to restrict the displays of several combinations of arrow signal indications of different colors pointing in the same direction on any one signal face or as a result of the combination of displays from multiple signal faces on an approach. The FHWA proposes this change to avoid displaying conflicting or confusing information to road users.

300. To better organize the information by subject matter, and to add clarity, the FHWA proposes to add several sections related to signal faces following Section 4D.10. The proposed new sections are numbered and titled ''Section 4D.11 Number of Signal Faces on an Approach,'' ''Section 4D.12 Visibility, Aiming, and Shielding of Signal Faces,'' ''Section 4D.13 Lateral Positioning of Signal Faces,'' ''Section 4D.14 Longitudinal Positioning of Signal Faces,'' ''Section 4D.15 Mounting Height of Signal Faces,'' and ''Section 4D.16 Lateral Offset (Clearance) of Signal Faces.'' Much of the information in these proposed new sections is contained in existing sections within Chapter 4D, but the text is revised to pertain to the subject of each particular section. Significant additional changes to the sections are described in items 301 through 305 below.

301. In new Section 4D.11 Number of Signal Faces on an Approach, the FHWA proposes revising item A of the STANDARD statement to clarify that two signal faces are required for a straight-through movement if such movement exists at a location, even if it is not the major movement, and to require two signal faces for the major signalized turning movement if no straight-through movement exists, such as on the stem of a T-intersection. The FHWA proposes these changes to ensure that the straight-through movement, or major signalized turning movement in absence of a straight-through movement, contain redundant signal faces in case of one of the signal faces fails, and to incorporate the FHWA's Official Interpretation number 4–295(I).[140]

The FHWA also proposes adding an OPTION to allow a single section GREEN ARROW signal to be used when there is never a conflicting movement at an intersection. This single section signal may be used for a through movement at a T-intersection if appropriate geometrics and signing are placed according to an engineering study, to allow for free-flow of traffic where there are no conflicting movements. The FHWA proposes this change to incorporate Official Interpretation 4–255(I) into the MUTCD.[141]

The FHWA proposes to add a GUIDANCE statement at the end of the section that outlines the recommendations for providing and locating signal faces at intersections where the posted or statutory speed limit or the 85th-percentile speed on an approach exceeds 60 km/h (40 mph). As documented in the FHWA reports ''Making Intersections Safer: A Toolbox of Engineering Countermeasures to Reduce Red-Light Running''[142] and ''Signalized Intersections: Informational Guide,''[143] numerous studies have found significant safety benefits from locating signal faces overhead rather than at the roadside, providing one overhead signal face per through lane when there is more than one through lane, providing supplemental near-side and/or far-side post-mounted faces for added visibility, and including backplates on the signal faces. Additionally, two recent studies, by the

[137] NCHRP Report 493, ''Evaluation of Traffic Signal Displays for Protected/ Permissive Left-Turn Control,'' 2003, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_493.pdf.*

[138] NCHRP Report 493, ''Evaluation of Traffic Signal Displays for Protected/ Permissive Left-Turn Control,'' 2003, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_493.pdf.*

[139] An abstract and summary of ''An Evaluation of Driver Comprehension of Solid Yellow Indications Resulting from Implementation of Flashing Yellow Arrow,'' 2007, by Michael A. Knodler, David A. Noyce, Kent C. Kacir, and Chris L. Brehmer, can be viewed at the following Internet Web site: *http://pubsindex.trb.org/document/view/default.asp?lbid=802137.*

[140] FHWA's Official Interpretation 4–295(I), dated October 19, 2005, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_297.htm.*

[141] FHWA's Official Interpretation 4–255(I), dated February 19, 2003, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/documents/pdf/4–255-I-NE-s.pdf.*

[142] Pages 17–27 of this report can be viewed at the following Internet Web site: *http://safety.fhwa.dot.gov/intersections/docs/rlrbook.pdf.*

[143] ''Signalized Intersections: Informational Guide'', FHWA publication number FHWA–HRT–04–091, August 2004, pages 73–75 and 281–282, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/safety/pubs/04091/.*

URS Corporation [144] and by Bradley University [145] found that reconfiguring diagonal signal spans to ''box'' spans or mast arm layouts with far-side signal face locations produced significant reductions in the number of red light violations and entries into the intersection late in the yellow change interval. The FHWA proposes the addition of this GUIDANCE to reflect modern signal design practices and to enhance the safety of signalized intersections along higher-speed roadways, where the potential benefits are greatest. For the same reasons, the FHWA also proposes that these recommendations should be considered as well as for any major urban or suburban arterial street with four or more lanes. The FHWA proposes a phase-in compliance period of 15 years for existing signals in good condition to minimize any impact on State or local highway agencies.

302. In place of existing Figure 4D–3 Typical Arrangements of Signal Lenses in Signal Faces, the FHWA proposes to add several new figures showing typical arrangements of signal sections in signal faces and typical lateral positioning of signal faces for several different conditions, including U-turn arrows, non-turning, and turning situations. The proposed new figures include Figures 4D–1, 4D–2, and 4D–6 through 4D–18. The FHWA believes that these new figures will assist users of the Manual in understanding and applying the relatively complex provisions, especially regarding turning movements.

303. In new Section 4D.12 Visibility, Aiming, and Shielding of Signal Faces, the FHWA proposes to revise the 4th paragraph of the first GUIDANCE statement, which was relocated from existing Section 4D.17, to add that signal backplates should be used on all of the signal faces that face an approach with a posted or statutory speed limit or where the 85th-percentile speed on the approach exceeds 60 km/hr (40 mph), and that signal backplates should be considered when the speeds are 60 km/hr (40 mph) or less. The FHWA proposes this change to reflect modern signal design practices to enhance safety by increasing the visibility of signal faces on higher-speed approaches, especially for older drivers, to reflect safety studies as documented in the FHWA reports ''Signalized Intersection: Informational Guide'' [146] and ''Making Intersections Safer: Toolbox of Engineering Countermeasures to Reduce Red Light Running,'' [147] as well as recommendations from the Older Driver handbook [148] The FHWA proposes a phase-in compliance period of 15 years for existing signals in good condition to minimize any impact on State or local highway agencies.

The FHWA also proposes to add an OPTION statement allowing the use of yellow retroreflective strips along the perimeter of a signal face backplate. The FHWA proposes this change to increase the conspicuity of the signal face at night, and to add language to the MUTCD in accordance with Interim Approval IA–1, dated February 2, 2004.[149]

304. In new Section 4D.13 Lateral Positioning of Signal Faces, the FHWA proposes adding a STANDARD requiring that overhead-mounted turn signal faces of certain types for exclusive turn lanes shall be located directly over the turn lane. The FHWA proposes this change to ensure that drivers associate the proper turn signal face with the exclusive turn lane and because the research documented in NCHRP Report 493 [150] found that this location produced the best driver understanding and correct behavior. The FHWA proposes a phase-in compliance period of 15 years for existing signals in good condition to minimize any impact on State or local highway agencies.

As part of this proposed change in the preceding paragraph, the FHWA proposes to add a GUIDANCE statement that on an approach with an exclusive left-turn lane(s) and opposing vehicular traffic where a circular green signal indication is used for permissive left turns, signal faces containing a circular green signal indication should not be post-mounted on the far side median or located overhead above an exclusive left-turn lane or the extension of the lane. The FHWA proposes this change because NCHRP Report 493 [151] found that the circular green permissive left-turn indication is confusing to some left-turn drivers who assume it provides right of way during the permissive interval. The FHWA believes that placement of the circular green indication directly above or in line with an exclusive left-turn lane exacerbates the safety issues with this display. Research [152] found that found that displaying a circular green signal indication in a separate signal face directly over an exclusive left-turn lane led to a higher left-turn crash rate than ''shared'' displays placed over the lane line between the left-turn lane and the adjacent through lane or to the right of that line. Placing the signal display over the lane line or to the right of it helps to promote the idea that the signal display with the circular green indication is being shared by the left-turn and through lanes. This can help reduce the infrequent but very dangerous occurrence of the circular green permissive indication being misunderstood as a protected ''go'' indication by left-turn drivers. The FHWA clarifies that this proposed recommendation would apply only to new or reconstructed intersections. The FHWA also proposes similar wording in proposed new Sections 4D.18 and 4D.20.

Finally, the FHWA proposes adding a STANDARD repeating the existing requirement in existing Section 4D.15 (new Section 4D.10) prohibiting the use of left-turn arrows in near-right signal faces and prohibiting the use of right-turn arrows in far-left signal faces when supplemental post-mounted signal faces are used. The FHWA proposes this change for additional emphasis and to ensure consistency.

305. In new Section 4D.15 Mounting Height of Signal Faces, the FHWA proposes to revise the 2nd and 3rd paragraphs of the STANDARD statement

[144] Details on this study, ''Far-Side Signals vs. Diagonal Span Behavioral Research,'' project number 12937724, February 2006, can be obtained from URS Corporation, 3950 Sparks Drive SE, Grand Rapids, MI 49546–2420.

[145] Evaluation of Signal Mounting Configurations at Urban Signalized Intersections in Michigan and Illinois'' by Kerrie L. Schattler, Matthew T. Christ, Deborah McAvoy, and Collette M. Glauber, August 1, 2007, may be obtained from the Department of Civil Engineering and Construction, Bradley University, 1501 West Bradley Avenue, Peoria, IL 61625.

[146] ''Signalized Intersections: Informational Guide'', FHWA publication number FHWA–HRT–04–091, August 2004, pages 288–290, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/safety/pubs/04091/.*

[147] Page 26 of this report can be viewed at the following Internet Web site: *http://safety.fhwa.dot.gov/intersections/docs/rlrbook.pdf.*

[148] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May, 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendation #I.N(3)

[149] The Interim Approval for Use of Retroreflective Border on Signal Backplates, number IA–1, dated February 6, 2004, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/pdfs/ia_retroborder.pdf.*

[150] NCHRP Report 493, ''Evaluation of Traffic Signal Displays for Protected/Permissive Left-Turn Control,'' 2003, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_493.pdf.*

[151] NCHRP Report 493, ''Evaluation of Traffic Signal Displays for Protected/Permissive Left-Turn Control,'' 2003, page 57, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_493.pdf.*

[152] ''An Evaluation of Permissive Left-Turn Signal Phasing,'' by Kenneth R. Agent, ITE Journal, Vol. 51, No. 12, December, 1981, pages 16–20, may be obtained from the Institute of Transportation Engineers (Web site: *http://www.ite.org.*)

to apply the height requirements for signal housings to any portion of a highway that can be used by motor vehicles. Because a shoulder is not included in the definition of roadway, the FHWA proposes this change to ensure that any portion of the highway on which motor vehicles may travel is subject to the appropriate height requirements.

306. To better organize the information by subject matter, and to add clarity, the FHWA proposes to add several sections related to signal indications for turn movements following new Section 4D.16. The FHWA proposes to renumber and retitle existing Section 4D.06 to be ''Section 4D.17 Signal Indications for Left-Turn Movements—General.'' Proposed new Sections 4D.18 through 4D.20 describe the use of specific signal indications and signal faces for the permissive only mode, the protected only mode, and the protected/permissive mode left-turn movements, respectively. The FHWA proposes to renumber and retitle existing Section 4D.07 to be ''Section 4D.21 Signal Indications for Right-Turn Movements—General.'' Proposed new Sections 4D.22 through 4D.24 describe the various modes of signalized right-turn movements in the same order as the left turns. In addition to adding new material related to the proposed addition of the flashing yellow arrow and flashing red arrow, the FHWA proposes several editorial changes within each new section to ensure that the text pertains to the subject of the particular section. The FHWA proposes to allow the use of flashing red arrow for permissive turn movements only in certain unusual circumstances where an engineering study determines that each successive vehicle must come to a full stop before making the turn permissively. The FHWA also proposes to add Figures 4D–6 through 4D–12 and Figures 4D–13 through 4D–18 to illustrate positioning and typical signal faces for each of the modes of left-turn and right-turn phasing, respectively. Significant additional changes to the sections are described in items 307 through 314 below.

307. In new Section 4D.17 Signal Indications for Left-Turn Movements—General, the FHWA proposes adding a STANDARD statement specifying the requirements for signal indications on the opposing approach and for conflicting pedestrian movements during permissive and protected left-turn movements. The FHWA proposes this addition for consistency with other requirements in Part 4. The FHWA also proposes to prohibit the use of a protected-only mode left-turn phase which begins or ends at a different time than the adjacent through movements unless an exclusive left turn lane is provided. The FHWA proposes this change because, without an exclusive left-turn lane, the operation of a protected-only mode left-turn phase forces left-turning vehicles to await the display of the protected green arrow while stopped in a lane used by through vehicles, causing many approaching through vehicles to abruptly change lanes to avoid delays, and this can result in inefficient operations and rear-end and sideswipe type crashes.[153] If an exclusive left-turn lane is not present and protected only mode is needed for the left-turn movement, ''split-phasing,'' in which the protected left-turn movement always begins and ends at the same times in the signal cycle as the adjacent through movement, can be used. The FHWA proposes a phase-in compliance period of 10 years for existing signals in good condition to minimize any impact on State or local highway agencies.

The FHWA also proposes adding an OPTION to allow the use of static signs to inform drivers that left-turn arrows will not be available at certain times of the day. The FHWA proposes this change to give agencies an option to inform motorists of the presence of a variable mode left turn signal.

308. In new Section 4D.18 Signal Indications for Permissive Only Mode Left-Turn Movements, the FHWA proposes adding STANDARD statements for the use of flashing yellow arrow and flashing red arrow as permissive left turn signals. The FHWA proposes this change as part of the addition of flashing yellow arrow and flashing red arrow options for signalizing permissive left-turns.

309. In new Section 4D.19 Signal Indications for Protected Only Mode Left-Turn Movements, the FHWA proposes to eliminate the STANDARD allowing the use of protected-only mode signal faces with the combination of circular red, left-turn yellow arrow, and left-turn green arrow. The FHWA proposes this change to enhance uniformity by requiring States and municipal agencies to use a left-turn red arrow instead of a circular red for protected-only mode left-turn signals. Red arrow signal indications have been in use for over 35 years, are extensively implemented for protected turn movements in the majority of States, are well understood by road users, present an unequivocal message regarding what movement is prohibited when the red indication is displayed, and eliminate the need for the use of a supplemental R10–10 LEFT TURN SIGNAL sign. The FHWA proposes a phase-in compliance period of 15 years for existing signals in good condition to minimize any impact on State or local highway agencies.

310. In new Section 4D.20 Signal Indications for Protected/Permissive Mode Left-Turn Movements, the FHWA proposes adding STANDARD statements for the use of flashing yellow arrow and flashing red arrow signal indications for protected/permissive left-turn movements. The FHWA also proposes adding a GUIDANCE statement that recommends against using ''separate'' signal faces for protected/permissive left-turn movements, since they include the display of a circular green indication that is located to the left of the lane line separating the left-turn lane from the adjacent through lane(s).

311. In new Section 4D.21 Signal Indications for Right-Turn Movements—General, the FHWA proposes adding a STANDARD statement specifying the requirements for left-turn signal indications on the opposing approach and for conflicting pedestrian movements during permissive and protected right-turn movements. The FHWA proposes this addition for consistency with other requirements in Part 4. The FHWA also proposes to prohibit the use of a protected-only mode right-turn phase which begins or ends at a different time than the adjacent through movements unless an exclusive right turn lane is provided. Similar to item 307 above for left-turns, the FHWA proposes this change because, without an exclusive right-turn lane, the operation of a protected-only mode right-turn phase forces right-turning vehicles to await the display of the protected green arrow while stopped in a lane used by through vehicles, causing many approaching through vehicles to abruptly change lanes to avoid delays, and this can result in inefficient operations and rear-end and sideswipe type crashes. The FHWA proposes a phase-in compliance period of 10 years for existing signals in good condition to minimize any impact on State or local highway agencies.

The FHWA also proposes adding an OPTION to allow the use of static or changeable message signs to inform drivers that right-turn arrows will not be available at certain times of the day. The FHWA proposes this change to give agencies an option to inform motorists of the presence of a variable mode right turn signal.

[153] ''Signalized Intersections: Informational Guide'', FHWA publication number FHWA–HRT–04–091, August 2004, page 307, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/safety/pubs/04091/*.

312. In new Section 4D.22 Signal Indications for Permissive Only Mode Right-Turn Movements, the FHWA proposes adding STANDARD statements for the use of flashing yellow arrow and flashing red arrow as permissive right turn signals. The FHWA proposes this change as part of the addition of flashing yellow arrow and flashing red arrow options for signalizing permissive right-turns.

313. In new Section 4D.23 Signal Indications for Protected-Only Mode Right-Turn Movements, the FHWA proposes to retain the provision currently located in existing Section 4D.07 that allows the use of protected-only mode right-turn signal faces with the combination of circular red, right-turn yellow arrow, and right-turn green arrow. Although the use of circular red indications for protected-only mode left-turns is proposed for elimination in item 309 above, the FHWA believes that circular red should be retained for use with protected-only mode right-turn movements because of the different meanings of the circular red and the right-turn red arrow signal indications regarding right-turn-on-red after stop. Circular red would be used in a protected-only mode right turn signal face if it is intended to allow right turns on red after stopping. The FHWA also proposes adding STANDARD statements for the use of flashing yellow arrow and flashing red arrow signal indications for protected only mode right-turn movements.

314. In new Section 4D.24 Signal Indications for Protected/Permissive Mode Right-Turn Movements, the FHWA proposes adding STANDARD statements for the use of flashing yellow arrow and flashing red arrow signal indications for protected/permissive right-turn movements. The FHWA also proposes adding a STANDARD statement that prohibits the use of ''separate'' signal faces for protected/permissive right-turn movements, since they offer no benefits when compared to a shared signal face.

315. The FHWA proposes to add a new section numbered and titled, ''Section 4D.25 Signal Indications for Approaches With Shared Left-Turn/Right-Turn Lanes and No Through Movement.'' This new section contains SUPPORT, STANDARD and OPTION statements regarding this type of lane that is shared by left-turn and right-turn movements, which is sometimes provided on an approach that has no through movement, such as the stem of a T-intersection or where the opposite approach is a one-way roadway in the opposing direction. The FHWA proposes this change to provide explicit information regarding shared left-turn/right-turn lanes, which has not previously been included in the MUTCD, and to enhance uniformity of displays for this application. The FHWA proposes a phase-in compliance period of 15 years for existing signals in good condition to minimize any impact on State or local highway agencies.

316. In existing Section 4D.10 (new Section 4D.26) Yellow Change and Red Clearance Intervals, the FHWA proposes to revise the first STANDARD regarding yellow change intervals to account for the proposed introduction of the flashing yellow arrow and flashing red arrow for permissive turn phases.

The FHWA also proposes to change the first OPTION statement to a GUIDANCE, to recommend, rather than merely permit, a yellow change interval to be followed by a red clearance interval to provide additional time before conflicting movements are released, when indicated by the application of engineering practices as discussed below. The FHWA proposes this change based on safety studies indicating the positive effect on safety of providing a red clearance interval and surveys indicating that use of a red clearance interval is a predominant practice by jurisdictions, as documented in the FHWA report ''Making Intersections Safer: Toolbox of Engineering Countermeasures to Reduce Red Light Running.'' [154] The FHWA proposes a phase-in compliance period of 5 years for existing signals in good condition to minimize any impact on State or local highway agencies.

The FHWA also proposes to revise the second STANDARD statement to indicate that the durations of the yellow change interval and, when used, the red clearance interval, shall be determined using engineering practices, and to add a new SUPPORT statement to indicate that engineering practices for determining the durations of these intervals can be found in two Institute of Transportation Engineers publications. The FHWA proposes these changes to enhance safety at signalized intersections by requiring that accepted engineering methods be used to determine the durations of these critical intervals rather than random or ''rule of thumb'' settings, and by recommending the provision of a red clearance interval when such accepted engineering practices indicate such interval is needed. As documented in the FHWA report ''Signalized Intersections: Informational Guide,'' [155] a variety of studies from 1985 through 2002 have found significant safety benefits from using accepted engineering practices to determine the durations of yellow and red clearance intervals. Recent safety studies [156] have further documented significant major reductions in crashes when jurisdictions have revised the durations of the yellow change and red clearance intervals using the accepted engineering practices.

The FHWA also proposes a new STANDARD statement that requires that the duration of the yellow change intervals and red clearance intervals be within the technical capabilities of the signal controller, and be consistent from cycle to cycle in the same timing plan. The FHWA proposes this change to accommodate the inherent limitations of some older mechanical controllers but provide for consistency of interval timing.

Finally, the FHWA proposes a new STANDARD statement at the end of the section that prohibits the use at a signalized location of flashing green indications, countdown vehicular signals, or similar displays intended to provide a ''pre-yellow warning'' interval. Flashing beacons on advance warning signs on the approach to a signalized location would be exempted from the prohibition. The FHWA proposes this change to clarify the MUTCD consistent with FHWA Official Interpretation # 4–246.[157]

317. In existing Section 4D.13 (new Section 4D.27) Preemption and Priority Control of Traffic Control Signals, the FHWA proposes to add a GUIDANCE statement recommending that agencies provide back-up power supplies for signals with railroad preemption or that are coordinated with flashing light signal systems, with the exception of traffic control signals interconnected with light rail transit systems. The FHWA proposes this change to ensure that the primary functions of the

[154] Pages 35–36 of this report can be viewed at the following Internet Web site: *http://safety.fhwa.dot.gov/intersections/docs/rlrbook.pdf.*

[155] ''Signalized Intersections: Informational Guide'', FHWA publication number FHWA–HRT–04–091, August 2004, pages 209–211, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/safety/pubs/04091/.*

[156] NCHRP Research Results Digest 299, November 2005, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rrd_299.pdf.* This digest includes data from the study ''Changes in Crash Risk Following Retiming of the Traffic Signal Change Intervals,'' by R.A. Retting, J.F. Chapline, and A.F. Williams, as published in Accident Analysis and Prevention, Volume 34, number 2, pages 215–220, available from Pergamon Press, Oxford, NY.

[157] Official Interpretation 4–246 can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/documents/pdf/4–246–I–NY–S.pdf*

interconnected signal systems still function in a safe manner in the event of a power failure, and for consistency with similar proposed GUIDANCE in Part 8. The FHWA proposes a phase-in compliance period of 10 years for existing signals in good condition to minimize any impact on State or local highway agencies.

In addition, the FHWA proposes to add an OPTION allowing light rail transit signal indications to control preemption or priority control movements for public transit buses in ''queue jumper'' lanes or bus rapid transit in semi-exclusive or mixed-use alignments. The FHWA proposes this change to incorporate clarification into the MUTCD consistent with FHWA Official Interpretation #10–59(I) and #10–66(I), to provide additional flexibility to agencies seeking to reduce driver confusion with traffic signals intended to control only mass transit vehicles.[158]

318. Following new Section 4D.27, the FHWA proposes to add several sections related to the flashing operation of traffic signals. The proposed sections are numbered and titled, ''Section 4D.28 Flashing Operation of Traffic Control Signals—General,'' ''Section 4D.29 Flashing Operation—Transition Into Flashing Mode,'' ''Section 4D.30 Flashing Operation—Signal Indications During Flashing Mode,'' and ''Section 4D.31 Flashing Operation—Transition Out of Flashing Mode.'' While much of this information is contained in existing sections of the MUTCD, the FHWA proposes to edit, add new information, and better organize the material to provide clarity on the flashing operation of traffic signals, including how to transition into and out of flashing mode. Significant additional changes to existing material are described in items 319 through 322 below.

319. In Section 4D.28 Flashing Operation of Traffic Control Signals—General, the FHWA proposes to add an OPTION allowing traffic control signals to be operated in flashing mode on a scheduled basis during one or more periods of the day. The FHWA proposes this change because more efficient operations may be achieved if the signal is set to flashing mode when steady mode (stop and go) operation is not needed. This change is consistent with a similar proposed change in Section 4C.04 discussed in item 284 above.

320. In Section 4D.29 Flashing Operation—Transition into Flashing Mode, the FHWA proposes to add information to the STANDARD for terminating the flashing yellow arrow signal indication when entering flashing mode. The FHWA proposes this change as part of the proposed addition of the flashing yellow arrow indication for permissive turns.

321. In Section 4D.30 Flashing Operation—Signal Indications During Flashing Mode, the FHWA proposes to include a paragraph in the STANDARD statement that prohibits green signal indications from being displayed when a traffic control signal is operated in the flashing mode, except for single-section green arrow signal indications as noted elsewhere in the section. The FHWA proposes this paragraph to clarify proper displays during flashing mode.

The FHWA also proposes to revise the STANDARD to allow a signal face consisting of entirely arrow indications to flash a yellow arrow indication if it is intended that turns are to be permitted after yielding, without a full stop required, during flashing mode. The FHWA proposes this change to provide clarity that this application is allowed.

322. In Section 4D.31 Flashing Operation—Transition Out of the Flashing Mode, the FHWA proposes to add a STANDARD requiring that no steady green or flashing yellow indication shall be terminated and immediately followed by a steady red indication without first displaying a steady yellow indication. The FHWA proposes this change to ensure that road users receive adequate warning of the onset of the red indication when the signal is transitioning from flashing mode to steady mode.

323. As part of the restructuring of Chapter 4D, the FHWA proposes to renumber and revise the titles of existing Sections 4D.20, 4D.19, and 4D.21 to be ''Section 4D.32 Temporary and Portable Traffic Control Signals,'' ''Section 4D.33 Lateral Offset of Signal Supports and Cabinets,'' and ''Section 4D.34 Use of Signs at Signalized Locations,'' respectively.

324. In new Section 4D.34 Use of Signs at Signalized Locations, the FHWA proposes to add to the GUIDANCE statement a recommendation to use overhead lane-control signs where lane-drops, multiple-lane turns, shared through and turn lanes, or other lane-use regulations that may be unexpected by unfamiliar road users are present. The FHWA proposes this change to enhance safety by providing road users with highly visible notice of the appropriate lane-use regulations before approaching an intersection where these unusual and unexpected conditions exist. This change also reflects safety studies as documented in the FHWA report ''Signalized Intersections: Informational Guide'' [159] and recommendations from the Older Driver handbook.[160] The FHWA proposes a phase-in compliance period of 10 years for existing locations to minimize any impact on State or local highway agencies.

325. The FHWA proposes adding a new section following Section 4D.34. The proposed new section is numbered and titled ''Section 4D.35 Use of Pavement Markings at Signalized Locations,'' and contains paragraphs relocated from Section 4D.01.

Discussion of Proposed Amendments Within Chapter 4E

326. In Section 4E.02 Meaning of Pedestrian Signal Head Indications, the FHWA proposes to revise item B of the STANDARD that defines the meaning of the flashing UPRAISED HAND pedestrian signal indication. First, the FHWA proposes to allow pedestrians that enter the intersection on a steady WALKING PERSON indication to proceed to the far side of the traveled way unless otherwise directed by signs or signals to proceed only to a median or pedestrian refuge area. The FHWA proposes this change to allow pedestrians to cross an entire divided highway and not have to stop at the median if the signal has been timed to provide sufficient time for pedestrians to cross the entire highway. In cases where the signal timing only provides enough time for pedestrians to cross to the median, signs or signals are required to be provided to direct pedestrians accordingly. The FHWA also proposes changes in Section 4E.10 (see item 336 below) for consistency with this change. In addition, the FHWA proposes to allow pedestrians to enter the intersection when a countdown pedestrian signal indication is shown with the flashing UPRAISED HAND if they are able to travel to the far side of the traveled way or to a median by the time a conflicting vehicular movement is allowed to proceed. The FHWA proposes this change because many pedestrians walk faster than the walking

[158] FHWA's Official Interpretations 10–59(I), dated April 16, 2003, and 10–66(I), dated October 6, 2006, can be viewed at the following Internet Web sites: *http://mutcd.fhwa.dot.gov/resources/interpretations/10_59.htm* and *http://mutcd.fhwa.dot.gov/resources/interpretations/10_66.htm*.

[159] ''Signalized Intersections: Informational Guide'', FHWA publication number FHWA–HRT–04–091, August 2004, pages 292–293, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/safety/pubs/04091/*.

[160] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May, 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm*. Recommendation I.M(1).

speeds used to calculate the length of the pedestrian change interval; therefore, many pedestrians are easily able to begin their crossing after the flashing UPRAISED HAND and countdown period has started and complete their crossing during the displayed countdown period and the additional buffer period of vehicular yellow and red clearance intervals. As a result, pedestrians should be permitted to make their own determination of whether or not they have sufficient time to begin and complete their crossing during the remaining pedestrian clearance time. Some jurisdictions using pedestrian countdown signals, such as Salt Lake City, Utah, have adopted laws and ordinances similar to the FHWA's proposal.[161] The FHWA acknowledges that this change will require a coordinated change to the Uniform Vehicle Code.

327. In Section 4E.03 Application of Pedestrian Signal Heads, the FHWA proposes to add a 2nd STANDARD statement at the end of the section to explicitly require a steady or flashing red signal indication to be shown to any conflicting vehicular movement perpendicular to a crosswalk with an associated pedestrian signal head displaying either a steady WALKING PERSON or flashing UPRAISED HAND indication. The FHWA proposes this addition to reflect sound engineering practice.

328. In Section 4E.04 Size, Design, and Illumination of Pedestrian Signal Head Indications, the FHWA proposes to revise the first STANDARD statement to allow the use of a one-section pedestrian signal head with the WALKING PERSON and UPRAISED HAND symbols overlaid upon each other or side by side. The FHWA proposes this change to reflect Official Interpretation #4–303,[162] dated February 3, 2006, which clarified that: ''As long as the [signal head] properly displays the individual upraised hand and walking person indications, visible as distinctly separate indications meeting all other requirements (color, shape, luminous intensity, etc.), the light sources comprising the indications may be overlaid on each other or they may be side-by-side.'' The FHWA proposes to change Figure 4E–1 Typical Pedestrian Signal Indications to reflect this change.

The FHWA also proposes to add a paragraph to the GUIDANCE statement recommending that some form of automatic dimming be used to reduce the brilliance of the pedestrian signal indication if the indication is so bright as to cause excessive glare in nighttime conditions. The FHWA proposes this new recommendation to avoid glare conditions, which can reduce the visibility of the indications at night, similar to the existing GUIDANCE for vehicular signal indications in Chapter 4D.

329. Both the Rehabilitation Act of 1973 (Section 504) and the Americans With Disabilities Act of 1990 require that facilities, programs and services be accessible to persons with disabilities. The FHWA proposes changes to Sections 4E.06, 4E.08, and 4E.09 of MUTCD regarding communication of pedestrian signal information to pedestrians with vision, vision and hearing, or cognitive disabilities to reflect research[163] conducted under NCHRP 3–62, Accessible Pedestrian Signals, and a 5-year project on Blind Pedestrians' Access to Complex Intersections sponsored by the National Institutes of Health, National Eye Institute, that has demonstrated that certain techniques most accurately communicate information. The proposed changes also result in making accessible pedestrian detectors easy to locate and actuate by persons with visual or mobility impairments. Significant proposed changes to existing material are described in item 330 and items 332 through 335 below.

330. In Section 4E.06 Accessible Pedestrian Signals, the FHWA proposes to change the second STANDARD to require both audible and vibrotactile walk indications, and to add requirements on how audible and vibrotactile walk indications are to be provided. The FHWA proposes that audible indications shall not be provided during the pedestrian change interval because research[164] has found that visually disabled pedestrians need to concentrate on the sounds of traffic movement while they are crossing and audible indications of the flashing UPRAISED HAND interval would be distracting from that task. The FHWA proposes a phase-in compliance period of 10 years for existing signals in good condition to minimize any impact on State or local highway agencies.

The FHWA also proposes to change the existing 4th GUIDANCE statement regarding the loudness of audible pedestrian walk signals to a STANDARD. The new STANDARD bases the loudness of an audible pedestrian walk signal on the ambient sound level and provides for louder volume adjustment in response to an extended pushbutton press. The FHWA proposes these changes to allow the audible pedestrian walk signals to be heard over the ambient sound level, and to allow pedestrians with hearing impairments to receive a louder audible walk signal. The FHWA also proposes to add to this STANDARD that an accessible walk signal shall have the same duration as the pedestrian walk signal unless the pedestrian signal rests in the walk phase and add subsequent GUIDANCE regarding the recommended duration and operation of the accessible walk signal if the pedestrian signal rests in the walk phase. The FHWA proposes this change to clarify that the duration of accessible walk signals is dependent on whether the signal controller is set to rest in walk or steady don't walk in the absence of conflicting demands.

Following the new STANDARD statement, the FHWA proposes to add new GUIDANCE, OPTION, and SUPPORT statements regarding the duration, tone, and speech messages of audible walk indications in order to clarify their use and application.

The FHWA proposes to modify the existing 4th STANDARD to require that speech walk messages only be used where it is technically infeasible to install two accessible pedestrian signals at one corner with the minimum required separation. The STANDARD also contains requirements for what information is allowed in speech messages. The FHWA also proposes a GUIDANCE statement that recommends that the speech messages not state or imply a command. The FHWA proposes these changes to clarify when and under what circumstances speech walk messages are to be used. The FHWA proposes a phase-in compliance period of 10 years for existing signals in good condition to minimize any impact on State or local highway agencies.

The FHWA proposes deleting the existing last SUPPORT, STANDARD, and GUIDANCE statements from this section and replacing them with information regarding the use of audible beaconing as an additional feature that may be provided as a result of an extended pushbutton press. The FHWA proposes adding this information, because while they can be valuable,

[161] Salt Lake City ordinance 12.32.055, Pedestrian Signal Indications, can be viewed at the following Internet Web site: *http://66.113.195.234/UT/Salt%20Lake%20City/11008000000007000.htm.*

[162] Official Interpretation #4–303 can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/pdf/4_303.pdf.*

[163] Research reports on this topic can be viewed at the U.S. Access Board's Internet Web site at: *http://www.access-board.gov/research/aps.htm.*

[164] Research reports on this topic can be viewed at the U.S. Access Board's Internet Web site at: *http://www.access-board.gov/research/aps.htm.*

activating audible beaconing features at multiple crosswalks at the same intersection can be confusing to visually disabled pedestrians, and therefore audible beaconing should be activated only when needed.

331. In Section 4E.07 Countdown Pedestrian Signals, the FHWA proposes changing the option of using pedestrian countdown displays to a requirement for new installations of pedestrian signals. The proposed STANDARD requires the use of countdown displays at all pedestrian signals except where the duration of the pedestrian change interval is less than 3 seconds. The FHWA proposes a phase-in compliance period of 10 years for the addition of pedestrian countdown displays to existing pedestrian signals in good condition to minimize any impact on State or local highway agencies. The FHWA proposes this change to provide enhanced pedestrian safety because a multi-year research project involving crash data for hundreds of locations in San Francisco [165] showed significant overall safety benefits and substantial reductions in the number of pedestrian-vehicle crashes when countdown signals are used, as compared to locations that did not have the countdowns.

In addition, the FHWA proposes a new STANDARD after the first paragraph of the GUIDANCE that requires that a pedestrian countdown signal be dark when the duration of the green interval for a concurrent vehicular movement has intentionally been set to continue beyond the end of the pedestrian change interval. The FHWA proposes this change to ensure consistency with normal pedestrian signal operations, which requires the countdown display to be dark whenever the steady UPRAISED HAND is displayed.

332. In Section 4E.08 Pedestrian Detectors, the FHWA proposes changing the first GUIDANCE statement regarding the location of a pedestrian pushbutton to a STANDARD and adding criteria that are to be met for the location of pushbuttons. The FHWA proposes to add GUIDANCE and OPTION statements that contain additional information for locations where constraints make meeting some of the criteria impractical. The FHWA proposes these changes to make pedestrian pushbuttons more accessible to disabled pedestrians and to pedestrians in general. The FHWA proposes a phase-in compliance period of 15 years for existing signals in good condition to minimize any impact on State or local highway agencies.

In addition, the FHWA proposes modifying the existing first STANDARD statement to require accessible pedestrian pushbuttons mounted on the same pole to be provided with the accessible features described in Section 4E.09 of the MUTCD. The FHWA also proposes to change the following GUIDANCE statement to a STANDARD to require that the positioning of the pushbuttons and legends on the signs clearly indicate which crosswalk signal is activated by which pushbutton. The FHWA proposes these changes to eliminate ambiguity regarding which pushbutton a pedestrian must activate to cross a particular street. The FHWA also proposes to add to the existing last STANDARD statement that a when a pilot light is used at an accessible pedestrian signal location, each actuation shall be accompanied by the speech message ''wait.'' The FHWA proposes this change to ensure that the activation confirmation is available to pedestrians with impaired vision.

Finally, the FHWA proposes to add a STANDARD statement at the end of the section requiring a FOR MORE CROSSING TIME: HOLD BUTTON DOWN FOR 2 SECONDS (R10–32P) sign if additional crossing time is provided by means of an extended pushbutton press. The FHWA proposes this change to ensure that pedestrians receive instructions of the use of this feature and are made aware of the feature's existence.

With the exception of the 15 year period proposed for the new requirements regarding locations of pedestrian pushbuttons, for the other new or revised provisions in Section 4E.08, the FHWA proposes a phase-in compliance period of 10 years for existing signals in good condition to minimize any impact on State or local highway agencies.

333. In Section 4E.09 Accessible Pedestrian Signal Detectors, the FHWA proposes to modify the second STANDARD to require pushbutton locator tones at accessible pedestrian signals. As part of this change, the FHWA proposes to change the following GUIDANCE statement regarding locator tones to a STANDARD. The FHWA proposes this change consistent with item 330 above. In addition, the FHWA proposes to change the first paragraph of the existing first GUIDANCE statement regarding tactile arrows to a STANDARD, and relocate it within the section. The FHWA proposes modifying the remainder of the GUIDANCE statement to reduce redundancy.

The FHWA proposes to add a STANDARD that requires locator tones, tactile arrows, speech walk messages, and a speech pushbutton informational message when two accessible pedestrian pushbuttons are placed on the same pole. Additionally, if the clearance time is sufficient to only cross to the median of a divided highway, an accessible pedestrian detector shall be provided on the median. The FWHA proposes these changes consistent with item 332 above.

The FHWA also proposes to add a paragraph to the existing 3rd OPTION statement allowing the use of an extended pushbutton press to activate additional accessible features at a pedestrian crosswalk. The FHWA proposes to follow this new paragraph with a new STANDARD statement that sets requirements for the amount of time a pushbutton shall be pressed to activate the extra features.

Finally, the FHWA proposes to add a STANDARD statement at the end of the section requiring that speech pushbutton information messages only play when the walk interval is not timing. Requirements regarding the content of these messages are also contained in this new STANDARD. The FHWA proposes this change to promote uniformity in the content of speech messages.

For the new or revised provisions of Section 4E.09, the FHWA proposes a phase-in compliance period of 10 years for existing signals in good condition to minimize any impact on State or local highway agencies.

334. The FHWA also proposes to revise existing Figure 4E–2 to show a general layout of recommended pushbutton locations. The FHWA proposes to add a new Figure numbered and titled, ''Figure 4E–3 Typical Pushbutton Locations'' that shows 8 examples of pushbutton locations for various sidewalk, ramp, and corner configurations. The FHWA proposes these additional figures to help clarify appropriate locations under different geometric conditions.

335. In Section 4E.10 Pedestrian Intervals and Signal Phases, the FHWA proposes to revise the first STANDARD to require the steady UPRAISED HAND indication to be displayed during the yellow change interval and the red clearance interval if used as part of the pedestrian clearance time. The FHWA proposes this change to be consistent with the proposed change in Section 4E.07 to require countdown pedestrian signal displays. The FHWA proposes a phase-in compliance period of 10 years for existing signals in good condition to

[165] ''Pedestrian Countdown Signals: Experience With an Extensive Pilot Installation,'' by Markowitz, Sciortino, Fleck, and Yee, published in ITE Journal, January 2006, pages 43–48, is available from the Institute of Transportation Engineers at the following Internet Web site: *http://www.ite.org.*

minimize any impact on State or local highway agencies.

The FHWA also proposes to revise the first GUIDANCE statement for calculating pedestrian clearance times to use slower walking speeds, except where extended pushbutton presses or passive pedestrian detection has been installed for slower pedestrians to request additional crossing time as noted in the OPTION. Another proposed GUIDANCE statement notes that a lower speed should be considered if significant numbers of pedestrians in wheelchairs or slower pedestrians are present. The FHWA proposes these changes to provide enhanced pedestrian safety, based on recent research [166] regarding pedestrian walking speeds.

In addition, based on the same research, the FHWA proposes to add a GUIDANCE statement recommending that the total of the walk phase and pedestrian clearance time should be long enough to allow a pedestrian to walk from the pedestrian detector to the opposite edge of the traveled way at a speed of 0.9 meters (3 feet) per second. The FHWA proposes this change to ensure that slower pedestrians can be accommodated at longer crosswalks if they start crossing at the beginning of the walk phase.

For the changes in recommended walking speeds and method of determining pedestrian timing, the FHWA proposes a phase-in compliance period of 5 years for existing signals in good condition to minimize any impact on State or local highway agencies.

The FHWA also proposes to change the last existing GUIDANCE to a STANDARD to require, rather than merely recommend, that median-mounted pedestrian signals, signing, and pushbuttons (if actuated) be provided when the pedestrian clearance time is sufficient only for crossing from the curb or shoulder to a median of sufficient width for a pedestrian to wait. The FHWA proposes this change to assure that pedestrians who must wait on a median or island are provided the means to actuate a pedestrian phase to complete the second half of their crossing. The FHWA proposes a phase-in compliance period of 10 years for existing signals in good condition to minimize any impact on State or local highway agencies.

The FHWA proposes to add an OPTION statement that allows a leading pedestrian interval when a high volume of pedestrians and turning vehicles are present. As indicated in the FHWA report ''Signalized Intersections: Informational Guide,'' [167] several studies have demonstrated that leading pedestrian intervals can significantly reduce conflicts for pedestrians. The FHWA also proposes to add a GUIDANCE statement that gives a recommended minimum length of the leading pedestrian interval, reflecting recommendations from the Older Driver handbook,[168] and the traffic control devices that should be used to prevent turning vehicles from crossing the path of pedestrians during this leading interval.

Finally, the FHWA proposes an OPTION statement that permits the green time for the concurrent vehicular movement to be set longer than the pedestrian change interval to allow vehicles to complete turns after the pedestrian phase. The FHWA proposes these changes to include this application in the MUTCD that is used by many jurisdictions, and recommended by the Older Driver handbook [169] to reduce conflicts between pedestrians and turning motor vehicles.

Discussion of Proposed Amendments Within Chapters 4F through 4L

336. The FHWA proposes to add a new Chapter to Part 4, numbered and titled, ''Chapter 4F Pedestrian Hybrid Signals.'' The proposed new chapter would have three sections that describe the application, design, and operation of pedestrian hybrid signals. A pedestrian hybrid signal is a special type of hybrid signal used to warn and control traffic at an unsignalized location to assist pedestrians in crossing a street or highway at a marked crosswalk. A pedestrian hybrid signal contains a circular yellow signal indication centered below two circular red signal indications, and shall be dark except when activated. The remaining Chapters in Part 4 would be re-lettered accordingly. The FHWA proposes this addition to give agencies additional flexibility by providing an alternative method for control of pedestrian crosswalks that has been found by research [170] to be highly effective. This type of device has been used successfully for many years in Tucson, Arizona, where it is known as a ''HAWK Signal.'' This type of device offers significant benefits for providing enhanced safety of pedestrian crossings where normal traffic control signals would not be warranted. The FHWA proposes a phase-in compliance period of 10 years for existing signals in good condition to minimize any impact on State or local highway agencies.

337. As part of this new Chapter, the FHWA proposes to add three new figures. Proposed Figures 4F–1 and 4F–2 contain guidelines for the justification of installation of pedestrian hybrid signals on low speed and high speed roadways, respectively. Proposed Figure 4F–3 shows the proposed sequence of intervals for a pedestrian hybrid signal.

338. The FHWA proposes changing the title of existing Chapter 4F (new Chapter 4G) to ''Traffic Control Signals and Hybrid Signals for Emergency Vehicle Access'' to reflect the proposed addition of hybrid signals to this chapter.

339. In existing Section 4F.01 (new Section 4G.01) Application of Emergency-Vehicle Traffic Control Signals and Hybrid Signals, the FHWA proposes adding a paragraph to the OPTION statement to allow an emergency-vehicle hybrid signal to be installed in place of an emergency-vehicle traffic control signal under the conditions described in Section 4G.04. The FHWA proposes this change to accommodate emergency-vehicle hybrid signals as proposed to be added as described below.

340. The FHWA proposes adding a new section following existing Section 4F.03 (new Section 4G.03). The proposed new section is numbered and titled ''Section 4G.04 Emergency-Vehicle Hybrid Signals'' and contains STANDARDS for this type of traffic signal which will be used in conjunction with signs to warn and control traffic at an unsignalized location where emergency vehicles enter or cross the street or highway. An emergency-vehicle hybrid signal contains a circular yellow signal

[166] Pedestrian walking speed research was included in ''Improving Pedestrian Safety at Unsignalized Pedestrian Crossings,'' TCRP Report 112/NCHRP Report 562, Transportation Research Board, 2006, which can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_562.pdf.* Also see the article ''The Continuing Evolution of Pedestrian Walking Speed Assumptions,'' by LaPlante and Kaeser, ITE Journal, September 2004, pages 32–40, available from the Institute of Transportation Engineers, Web site: *http://www.ite.org.*

[167] ''Signalized Intersections: Informational Guide'', FHWA publication number FHWA–HRT–04–091, August 2004, pages 197–198, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/safety/pubs/04091/.*

[168] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May, 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendation I.P(6).

[169] This 2001 report can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/01–051.pdf.*

[170] ''Improving Pedestrian Safety at Unsignalized Pedestrian Crossings,'' TCRP Report 112/NCHRP Report 562, Transportation Research Board, 2006, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_562.pdf.*

indication centered below two circular red signal indications, and shall be dark except when activated. The FHWA had proposed the addition of a somewhat similar device, the Emergency Beacon, for the 2003 edition of the MUTCD but decided not to include it in the Final Rule due to various concerns about some details of the device's design and operational features and alleged insufficient experience with the device. Since that time, additional experience has been gained with this type of device and the current proposal to add the Emergency-Vehicle Hybrid Signal is revised from the previous proposal to address the earlier design and operational issues. The FHWA believes that hybrid signals provide an effective, alternative method to control traffic at some locations where emergency vehicles enter and cross roadways. The FHWA proposes a phase-in compliance period of 10 years for existing signals in good condition to minimize any impact on State or local highway agencies.

341. The FHWA proposes to add a new Figure 4G–1 that illustrates the Emergency-Vehicle Hybrid Signal.

342. In existing Section 4H.01 (new Section 4I.01) Application of Freeway Entrance Ramp Control Signals, the FHWA proposes to delete unnecessary descriptive language and instead add a SUPPORT statement referring the reader to FHWA's ''Ramp Management and Control Handbook'' [171] for information on conditions that might justify freeway entrance ramp control signals. The FHWA proposes this change because this publication, which was released after the 2003 MUTCD was published, is the appropriate place for the information rather than in the MUTCD.

343. In existing Section 4H.02 (new Section 4I.02) Design of Freeway Entrance Ramp Control Signals, the FHWA proposes to clarify the STANDARD by requiring the use of at least two signal faces per ramp on a single lane ramp or a multiple lane ramp where green signal indications are always displayed simultaneously. On a ramp with multiple lanes where the green signal indications are not always displayed simultaneously, (as is the case in some staggered-release ramp metering situations in which one lane receives the green while the other lane is stopped and then the other lane receives the green while the first lane is stopped), the FHWA proposes to require two signal faces per lane or group of lanes. The FHWA proposes this change to incorporate Official Interpretation #4–294(I) [172] into the MUTCD, which ensures that each separately controlled lane or group of lanes has at least two signal faces displayed. The FHWA proposes a phase-in compliance period of 10 years for existing signals in good condition to minimize any impact on State or local highway agencies.

The FHWA also proposes to add an OPTION to allow ramp control signals to control some, but not all lanes on a ramp. The FHWA proposes this change to reflect the current practice in many jurisdictions of providing HOV bypass lanes on ramps. Also, the FHWA proposes to add text to allow the two required signal faces to be mounted on the side of the roadway on the same pole when only one lane is controlled. The second signal face may be mounted lower than the normal mounting height. The FHWA proposes this change to incorporate existing practice in many ramp metering systems, designed to avoid motorist confusion that could arise if a signal were mounted on the side of the ramp where the lane is not controlled by the signal, due to the standard lateral separation requirements.

Finally, the FHWA proposes to add a GUIDANCE statement recommending that appropriate regulatory signs such as ONE VEHICLE PER GREEN should be installed adjacent to the signal face, and that special measures should be considered for freeway to freeway ramps. The FHWA proposes these changes to reflect the current practices in most jurisdictions that operate ramp metering systems.

344. The FHWA proposes adding a new section following new Section 4I.02. The proposed new section is numbered and titled ''Section 4I.03 Operation of Freeway Entrance Ramp Control Signals'' and contains GUIDANCE recommending that the operational strategies for ramp control signals should be determined prior to their installation, and that a RAMP METERED WHEN FLASHING (W3–7) sign with a warning beacon should be used for a ramp meter that is only used during certain portions of the day. The FHWA proposes these changes to ensure that a proper operating strategy has been developed and that road users are alerted to the presence and operation of part time ramp meters.

345. In existing Section 4I.02 (new Section 4J.02) Design and Location of Movable Bridge Signals and Gates, the FHWA proposes to revise the first STANDARD to require the use of 300 mm (12 in) diameter signal indications on all new movable bridge signals, and remove the option of using 200 mm (8 in) signal indications. The FHWA proposes this change to maintain consistency with the proposed changes in new Section 4D.05 that require the use of 300 mm (12 in) diameter signal indications for new signal faces. The FHWA also proposes to revise the STANDARD statement to require that a stop line be installed on signalized approaches to a movable span to indicate the point behind which vehicles are required to stop. The FHWA proposes this change to be consistent with other proposed changes throughout the MUTCD that require a stop line.

The FHWA also proposes to revise the 4th paragraph of the existing 2nd STANDARD to indicate that the stripes on movable bridge warning gates shall be vertical. The FHWA proposes this change to be consistent with other proposed changes in Parts 8 and 10 and the new Section 2L.06 that require vertical, rather than diagonal, stripes on warning gates. The FHWA proposes a phase-in compliance period of 10 years to minimize any impact on State or local highway agencies.

346. In existing Section 4I.03 (new Section 4J.03) Operation of Movable Bridge Signals and Gates, the FHWA proposes to add to the GUIDANCE statement that traffic signals on adjacent streets or highways that are interconnected with drawbridge control should be preempted by the operation of the movable bridge in accordance with Section 4D.27. The FHWA proposes to add this language to ensure proper preemption when appropriate.

347. The FHWA proposes to add a new chapter to Part 4 titled, ''Chapter 4K Toll Plaza Traffic Signals.'' The remaining chapters would be relettered accordingly. This new chapter includes OPTION, STANDARD, GUIDANCE, and SUPPORT statements for traffic control signals in toll plazas. Items such as the number and size of signal faces, the phases which may be displayed, and the applications of toll plaza traffic signals to toll plaza operations are discussed in this chapter. The FHWA proposes this addition as a result of the recommendations in the Toll Plaza Best Practices and Recommendations Report [173] and to provide additional

[171] ''Ramp Management and Control Handbook,'' dated January 2006, FHWA Publication # FHWA–HOP–06–001 can be viewed at the following Internet Web site: *http://ops.fhwa.dot.gov/publications/ramp_mgmt_handbook/manual/manual/default.htm.*

[172] Official Interpretation # 4–294(I), dated September 30, 2005, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/pdf/4_294.pdf.*

[173] ''State of the Practice and Recommendations on Traffic Control Strategies at Toll Plazas,'' June 2006, can be viewed at the following Internet Web

Continued

consistency and uniformity of such displays for road users. The FHWA proposes a phase-in compliance period of 10 years for existing signals in good condition to minimize any impact on State or local highway agencies.

348. In existing Section 4K.02 (new Section 4L.02) Intersection Control Beacon, the FHWA proposes to add to the STANDARD statement that that two horizontally aligned red signal indications shall be flashed simultaneously, and two vertically aligned red signal indications shall be flashed alternately. The FHWA proposes this change to avoid horizontally aligned red signal indications in an intersection control beacon from being confused with highway-rail grade crossing flashing-light signals, and to be consistent with the existing requirement for stop beacons in existing Section 4K.05 (new Section 4L.05).

349. In existing Section 4K.03 (new Section 4L.03) Warning Beacon, the FHWA proposes to add an item to the SUPPORT statement to add the typical use of Warning Beacons in conjunction with a regulatory or warning sign that includes the phrase WHEN FLASHING in its legend to indicate that the regulation is in effect or that the condition is present only at certain times.

The FHWA also proposes to add to the GUIDANCE statement that warning beacons used on toll plaza canopies to call attention to signs denoting electronic toll collection lanes should be distinctly separate from lane-use control signals. The FHWA proposes this change as a result of the Toll Plazas Best Practices and Recommendations Report [174] and to reflect the new standard requiring a lane-use control signal above all non-open-road electronic toll collection lanes. The FHWA proposes a phase-in compliance period of 10 years to minimize any impact on State or local highway agencies.

In addition, the FHWA proposes to add to the OPTION statement that Warning Beacons that are activated by bicycles and pedestrians may be used as appropriate to provide additional warning to approaching vehicles. The FHWA proposes this change to clarify the allowable use of pedestrian-actuated beacons, per FHWA Official Interpretation # 4–269.[175]

Finally, the FHWA proposes to add an OPTION statement allowing Warning Beacons mounted on toll plaza islands, on toll plaza impact attenuators, and on toll booth ramparts to be mounted at a height which is appropriate for viewing in the toll plaza context, even if that height is lower than the normal minimum height above the pavement. The FHWA proposes this change as a result of the recommendations in the Toll Plaza Best Practices and Recommendations Report.[176]

350. In existing Section 4K.05 (new Section 4L.05) Stop Beacon, the FHWA proposes to add to the STANDARD that a Stop Beacon shall be used only to supplement a STOP sign, a DO NOT ENTER sign, or a WRONG WAY sign. The FHWA proposes this addition to reflect the meaning of a flashing red indication and for consistency with existing Section 4K.03 (new Section 4L.03). As part of this proposed change, the FHWA proposes to add to the last paragraph of the STANDARD that the mounting height range for the bottom of the signal housing or a Stop Beacon also applies to the top of a DO NOT ENTER sign or a WRONG WAY sign, in addition to a STOP sign.

351. In existing Section 4J.01 (new Section 4M.01) Application of Lane-Use Control Signals, the FHWA proposes to add a STANDARD statement requiring lane-use control signals to indicate lane open/lane closed status at toll plazas in lanes that are not Open Road electronic toll collection lanes. The FHWA also proposes an OPTION statement that allows the use of these signals in Open Road electronic toll collection lanes. The FHWA proposes these changes as a result of the recommendations in the Toll Plaza Best Practices and Recommendations Report.[177] Although some toll facilities use red-yellow-green traffic signal indications to indicate lane open/lane closed status, this is an antiquated and non-conforming practice because for several decades the MUTCD has required the use of standard red X and downward-pointing green arrow lane-use control signal indications for this specific purpose. The FHWA proposes a 10-year phase-in compliance period for this requirement for existing toll plazas to minimize any impacts on State or local highway agencies.

352. In existing Section 4J.03 (new Section 4M.03) Design of Lane-Use Control Signals, the FHWA proposes to add an Option to the existing STANDARD that requires that the bottom of the signal housing of any lane-use control signal face be at least 4.6 m (15 ft) above the pavement. The proposed OPTION would allow the signal to be mounted lower above a toll plaza lane. If the toll plaza canopy has a lower vertical clearance above the roadway than 4.6 m (15 ft), that clearance controls the height of vehicles that can use the lane and thus the lane-use control signal can be mounted below a height of 4.6 m (15 ft) as long as it is not lower than the bottom of the canopy. The FHWA proposes this change as a result of the recommendations in the Toll Plaza Best Practices and Recommendations Report.[178]

353. In existing Section 4L.01 (new Section 4N.01) Application of In-Roadway Lights, the FHWA proposes to add to the STANDARD statement that In-Roadway Lights shall only be used for applications described in this chapter. The FHWA also proposes to add to the STANDARD that In-Roadway Lights be flashed and not steadily illuminated. The FHWA proposes these changes to preclude the use of In-Roadway Lights for any purpose not included in this chapter because such uses have not yet been sufficiently tested to confirm their effectiveness and because steadily illuminated lights could be confused with internally illuminated raised pavement markings.

354. In Section 4L.02 (new Section 4N.02) In-Roadway Warning Lights at Crosswalks, the FHWA proposes to revise the GUIDANCE statement to account for the lower pedestrian walking speeds proposed elsewhere in Part 4 and to ensure consistency in walking speeds used to calculate pedestrian intervals. The FHWA also proposes to add a STANDARD statement that if pedestrian pushbuttons are used to actuate the In-Roadway Lights, a PUSH BUTTON TO TURN ON WARNING LIGHTS sign shall be mounted adjacent to or integral with each pedestrian pushbutton. The FHWA proposes this change to direct users on how to activate the In-Roadway Lights.

site: *http://mutcd.fhwa.dot.gov/rpt/tcstoll/index.htm.*

[174] ''State of the Practice and Recommendations on Traffic Control Strategies at Toll Plazas,'' June 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/rpt/tcstoll/index.htm.*

[175] FHWA Official Interpretation # 4–269, dated June 3, 2004, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/pdf/4_269.pdf.*

[176] ''State of the Practice and Recommendations on Traffic Control Strategies at Toll Plazas,'' June 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/rpt/tcstoll/index.htm.*

[177] ''State of the Practice and Recommendations on Traffic Control Strategies at Toll Plazas,'' June 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/rpt/tcstoll/index.htm.*

[178] ''State of the Practice and Recommendations on Traffic Control Strategies at Toll Plazas,'' June 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/rpt/tcstoll/index.htm.*

The FHWA also proposes to add a STANDARD statement requiring median-mounted pedestrian detectors when the period of operation is sufficient for crossing only from a curb or shoulder to the median of a divided highway. The FHWA proposes this change to ensure that pedestrians who only cross to the median can actuate the In-Roadway Lights to warn motorists for the remainder of their crossing, and for consistency with similar proposed changes in Section 4E.10.

The FHWA proposes a phase-in compliance period of 10 years for existing In-Roadway Lights in good condition to minimize any impact on State or local highway agencies.

Discussion of Proposed Amendments to Part 5 Traffic Control Devices for Low-Volume Roads

355. In Section 5A.01 Function, the FHWA proposes to change item B of the STANDARD statement to prohibit classifying a residential street in a neighborhood as a low-volume road for the purposes of Part 5 of the MUTCD. The FHWA proposes this change to provide consistency with item A of the STANDARD which states that low-volume roads shall be facilities lying outside the built-up area of Cities, towns, and communities.

356. In Section 5C.04 Stop Ahead and Yield Ahead Signs, the FHWA proposes to delete the OPTION statement that allows word message signs to be used as an alternative to symbol signs. The FHWA proposes this change because the use of word message Stop Ahead and Yield Ahead signs are no longer permitted. This corresponds with a proposed change in Chapter 2C.

357. In Section 5C.07 Hill Sign, the FHWA proposes to delete the 2nd paragraph of the OPTION statement that permits confining the use of the Hill sign on low-volume roads to roads where commercial or recreational vehicles are anticipated. The FHWA proposes this change to emphasize that the use of the Hill sign should be based on the results of an engineering study of vehicles and road characteristics, as stated in the first paragraph of the OPTION statement.

358. The FHWA proposes to relocate existing Section 5E.05 Object Markers to Chapter 5C. The section will be numbered and titled ''Section 5C.14 Object Markers and Barricades.'' The FHWA proposes this change in order to locate the subject material with other sections in Part 5 that deal with signs. This change coincides with the proposed relocation of object markers and barricades from Part 3 to Part 2 of the MUTCD.

359. In Section 5F.02 Highway-Rail Grade Crossing (Crossbuck) Sign and Number of Tracks Plaque, the FHWA proposes to revise the 3rd paragraph of the STANDARD statement to clarify that the measurement for the strip of retroreflective material that is to be placed on each support is to be from the Crossbuck sign or the Number of Tracks sign to within 0.6 m (2 ft) above the ground. The FHWA proposes this change to be consistent with similar proposed changes in Parts 8 and 10.

360. In Section 5F.03 Highway-Rail Grade Crossing Advance Warning Signs, the FHWA proposes several changes to the section to reflect that a supplemental plaque describing the type of traffic control at a highway-rail grade crossing shall be used on all low-volume roads in advance of every crossing. The FHWA proposes these changes to be consistent with similar proposed changes in Parts 8 and 10.

361. In Section 5F.04 STOP and YIELD Signs, the FHWA proposes several changes to the section regarding the use and application of STOP signs or YIELD signs at highway-rail grade crossings. The FHWA proposes these changes to be consistent with similar proposed changes in Parts 8 and 10 (see more detailed discussions below).

Discussion of Proposed Amendments to Part 6 Temporary Traffic Control

Discussion of Proposed Amendments Within Part 6—General

362. The FHWA proposes to revise the Code of Federal Regulations to delete 23 CFR Part 634 regarding Worker Visibility. The FHWA proposes this change in order to incorporate those provisions into the MUTCD, which is applicable to all public roads. As such, 23 CFR Part 634 would no longer be needed because its requirements would be incorporated into the MUTCD, and therefore, applicable to all roads open to public travel in accordance with 23 CFR Part 655, not just Federal-aid highways.

363. The FHWA proposes to revise the first SUPPORT statement in Chapter 6A to indicate that the acronym ''TTC,'' meaning Temporary Traffic Control, applies to all of Part 6. In conjunction, the FHWA would delete the first SUPPORT statement from the remaining Chapters in Part 6 because it is repetitive.

364. The FHWA proposes to revise the first STANDARD statement in Chapter 6A to indicate that the needs and control of all road users through a TTC zone apply to all public facilities and on private property open to public travel, in addition to highways. The FHWA proposes this change to incorporate FHWA's Final Rule to 23 CFR Part 655, dated December 14, 2006, which provided clarification on the meaning of roads ''open to public travel.'' [179] The FHWA would delete the first STANDARD statement from the remaining Chapters in Part 6 because it repeats this information, which is not necessary.

365. The FHWA proposes to update the figures throughout Part 6 to reflect proposed new or revised signs in Part 2 that are applicable to Temporary Traffic Control Zones.

Discussion of Proposed Amendments Within Chapters 6A through 6E

366. In Section 6B.01 Fundamental Principles of Temporary Traffic Control, the FHWA proposes to clarify items F and G of the second GUIDANCE statement to indicate that it is on high-volume streets and highways that roadway occupancy should be scheduled during off-peak hours and that if significant impacts to roadway operations are anticipated, early coordination should occur with officials having jurisdiction over the affected streets and providing emergency services. The FHWA proposes these changes to provide agencies with more flexibility in allowing roadway occupancy, particularly for work on local residential streets and other low volume streets where temporary traffic control does not cause a problem during peak hours and to encourage communication.

367. In Section 6C.04 Advance Warning Area, the FHWA proposes to add information regarding sign spacing to the end of the GUIDANCE statement, as well as add a new SUPPORT statement. The FHWA proposes these changes to reinforce that the distances contained in Table 6C–1 are for guidance purposes and should be considered minimum, and that the recommended distances should be increased based on field conditions.

368. In Section 6C.08 Tapers, the FHWA proposes to add to the last GUIDANCE statement that the length of a short taper should be a minimum of 15 m (50 ft). In addition, the FHWA proposes to add that a downstream taper with a length of approximately 30 m (100 ft) should be used to guide traffic back into their original lane. The FHWA proposes these changes to provide practitioners with more information

[179] The **Federal Register** Notice for the Final Rule, dated December 14, 2006, (Volume 65, Number 70, Page 75111–75115) can be viewed at the following Internet Web site: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2006_register&docid=fr14de06-6.pdf.*

regarding taper lengths. In particular, this proposed change provides a minimum length for a ''short taper,'' because no length had been provided in the past, and to reflect the use of a ''downstream taper'' as has been shown in various existing figures in Part 6.

369. In Table 6C–3 Taper Length Criteria for Temporary Traffic Control Zones, the FHWA proposes to add a minimum taper length for one-lane, two-way traffic tapers. The existing table contained only a maximum length, and the FHWA believes that it is important to also state a minimum length. In concert with this change, the FHWA proposes to add minimum taper lengths to existing Figures 6H–10, 6H–11, 6H–12, 6H–18 and 6H–27 (new Figures 6I–10, 6I–11, 6I–12, 6I–18 and 6I–27).

370. In Section 6C.10 One-Lane, Two-Way Traffic Control, the FHWA proposes to add an OPTION statement that explicitly allows for the movement of traffic through a one-lane, two-way constriction to be self-regulating, provided that the work space is short, on a low-volume street or road, and that road users from both directions are able to see the traffic approaching from the opposite direction through and beyond the work site. The FHWA proposes this change to provide practitioners with more flexibility on low-volume, low-speed roads.

371. In Section 6C.11 Flagger Method of One-Lane, Two-Way Traffic Control, the FHWA proposes to add to the first GUIDANCE statement that traffic should be controlled by a flagger at each end of a constricted section of roadway, unless a one-lane, two-way TTC zone is short enough to allow a flagger to see from one end of the zone to the other. The FHWA proposes this change to emphasize that the preferred method of flagger control is to use two flaggers.

372. The FHWA proposes relocating the information from existing Section 6F.54 regarding the PILOT CAR FOLLOW ME Sign and flaggers in activity areas where a pilot car is being used, to Section 6C.13 Pilot Car Method of One-Lane, Two-Way Traffic Control. The FHWA proposes this change because the information is specific to pilot cars, which are covered in Section 6C.13.

373. The FHWA proposes to relocate several paragraphs related to accessible pedestrian facilities from Section 6D.01 Pedestrian Considerations to Section 6D.02 Accessibility Considerations, in order to consolidate related information into one section.

374. In Section 6D.01 Pedestrian Considerations, the FHWA proposes to add to the existing 2nd STANDARD statement that accessibility and detectability shall be maintained along an alternate pedestrian route if a TTC zone affects an accessible and detectable pedestrian facility. The FHWA proposes this change to reflect the provisions of ADAAG.[180] Although this requirement is already included in Section 6G.11, the FHWA adds it to this section because it is a pedestrian consideration, and therefore, consistent with the content of this section. As part of this proposed change, the FHWA proposes to delete the first sentence of the 3rd GUIDANCE statement, which conflicts with the proposed STANDARD.

In addition, the FHWA proposes to delete the 3rd STANDARD statement regarding the requirement for TTC devices to be crashworthy because that requirement is covered in other sections and does not need to be repeated here.

375. In Section 6D.03 Worker Safety Considerations, the FHWA proposes to delete item B in the GUIDANCE statement because it would be superseded by new statements that the FHWA proposes adding later in the section. The FHWA proposes adding a new STANDARD statement to incorporate into the MUTCD the provisions of 23 CFR Part 634 regarding the use of high-visibility safety apparel by workers within the public right-of-way that were published in the **Federal Register** on November 24, 2006.[181] The FHWA also proposes adding a new first paragraph to the existing OPTION statement that allows first responders and law enforcement personnel to use safety apparel meeting a newly developed American National Standards Institute (ANSI) standard for ''public safety vests'' because this type of vest will better meet the special needs of these personnel. The FHWA proposes a phase-in compliance period of 2 years for worker apparel on non-Federal-aid highways to minimize any impact on State or local highway agencies. A compliance date of November 24, 2008 has already been established for worker apparel on Federal-aid highways as a result of 23 CFR Part 634.

376. In Section 6E.02 High-Visibility Safety Apparel, the FHWA proposes to make several changes regarding the use of high-visibility safety apparel by flaggers during daytime and nighttime activity, as well as law by enforcement personnel within a TTC zone, to reflect the provisions of 23 CFR Part 634 that were published in the **Federal Register** on November 24, 2006.[182] The FHWA also proposes adding a new OPTION statement that allows first responders and law enforcement personnel to use safety apparel meeting a newly developed ANSI standard for ''public safety vests'' because this type of vest will better meet their special needs. The FHWA proposes a phase-in compliance period of 2 years for worker apparel on non-Federal-aid highways to minimize any impact on state or local highway agencies. A compliance date of November 24, 2008 has already been established for worker apparel on Federal-aid highways as a result of 23 CFR Part 634.

377. In Section 6E.03 Hand-Signaling Devices, the FHWA proposes to change the first SUPPORT statement to a STANDARD, and modify the text to require that flaggers use a STOP/SLOW paddle, a red flag, or an Automated Flagger Assistance Device to control road users through TTC zones. The FHWA proposes this change in order to require that one of the three listed devices be used, and to explicitly delete 'hand signaling' from the list of permitted methods to control traffic. See item 379 below for additional discussion.

The FHWA also proposes to add SUPPORT and GUIDANCE statements prior to the first OPTION statement to clarify that it is optimal to place a STOP/SLOW paddle on a rigid staff, with minimum length of 2.1 m (7 ft), in order to display a STOP or SLOW message that is stable and high enough to be seen by approaching or stopped traffic. The FHWA proposes the new language to add clarity to the use of the staff because the STOP/SLOW paddle is shown on a staff in existing Figure 6E–1, however, there is no language in the existing text regarding the use of the staff.

378. The FHWA proposes to add three new sections following Section 6E.03. The first new section is numbered and titled, ''Section 6E.04 Automated Flagger Assistance Devices.'' This new section contains SUPPORT, STANDARD, GUIDANCE, and OPTION statements describing the use of Automated Flagger Assistance Devices (AFADs). AFADs are optional devices

[180] The Americans With Disabilities Accessibility Guidelines (ADAAG) can be viewed at the following Internet Web site: *http://www.access-board.gov/ada-aba/index.htm.*

[181] The Federal Registrar Notice for the Final Rule, dated November 24, 2006 (Volume 71, Number 226, Page 67792–67800) can be viewed at the following Internet Web site: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2006_register&docid=E6–19910.pdf.*

[182] The Federal Registrar Notice for the Final Rule, dated November 24, 2006 (Volume 71, Number 226, Page 67792–67800) can be viewed at the following Internet Web site: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2006_register&docid=E6–19910.pdf.*

that enable a flagger(s) to be positioned out of the lane of traffic and are used to control road users through temporary traffic control zones. The second new section is numbered and titled, ''Section 6E.05 STOP/SLOW Automated Flagger Assistance Devices'' and contains STANDARD, OPTION, and GUIDANCE statements describing the use of a remotely controlled STOP/SLOW sign on either a trailer or a movable cart system and a gate arm. The third new section is numbered and titled, ''Section 6E.06 Red/Yellow Lens Automated Flagger Assistance Devices'' and contains STANDARD, OPTION, and GUIDANCE statements describing the use of remotely controlled red and yellow lenses and a gate arm. The remaining sections in this chapter would be renumbered accordingly. The FHWA proposes to incorporate the AFAD into the MUTCD based on FHWA's revised Interim Approval, dated January 28, 2005.[183] The FHWA proposes a phase-in compliance period of 5 years for existing Automated Flagger Assistance Devices in good condition to minimize any impact on State or local highway agencies.

379. In existing Section 6E.04 (new Section 6E.07) Flagger Procedures, the FHWA proposes to add to the first STANDARD statement that flaggers shall use a STOP/SLOW paddle, flag or an AFAD to control road users, and that the use of hand movements alone is prohibited. The FHWA proposes this additional language to protect the safety of workers and road users and to reinforce that hand movements alone are not an acceptable flagging method.

380. The FHWA also proposes to relocate GUIDANCE and OPTION statements from existing Section 6E.05 to the end of new Section 6E.07 because they reference flagger procedures more than flagger stations.

381. In existing Section 6E.05 (new Section 6E.08) Flagger Stations, the FHWA proposes to add to the GUIDANCE statement that an escape route for flaggers should be identified. The FHWA proposes this text in order to emphasize the need to provide flaggers with a way to avoid an errant vehicle.

Discussion of Proposed Amendments Within Chapter 6F

382. In Table 6F–1 Sizes of Temporary Control Signs, the FHWA proposes to change the minimum size of the TO ONCOMING TRAFFIC (R1–2aP) sign to 600 mm x 450 mm (24 in x 18 in) to be consistent with the same sign in Part 2.

The FHWA also proposes to revise the sizes of certain signs listed in Table 6F–1 to incorporate sizes that are more legible for drivers with 20/40 visual acuity. This is consistent with similar proposed changes in sign sizes in Part 2.

383. In Section 6F.02 General Characteristics of Signs, the FHWA proposes to revise the first OPTION statement to delete fluorescent red-orange and fluorescent yellow-orange from the alternative colors for orange. The FHWA proposes this change to be consistent with a similar change in Part 2, and because there are no separate color specifications for these colors, as they are both contained within the single color specification for fluorescent orange.

384. The FHWA proposes adding a new section following Section 6F.11 STAY IN LANE. The proposed new section is numbered and titled ''Section 6F.12 Work Zone and Higher Fines Signs and Plaques.'' This proposed new section contains an OPTION statement describing the use of the WORK ZONE plaque above a Speed Limit Sign to emphasize that a reduced speed limit is in effect within a TTC zone and the FINES HIGHER, FINES DOUBLED, and $XX FINE plaques that may be mounted below the Speed Limit sign if increased fines are imposed for traffic violations within the TTC zone, as well as the associated signs that may be used to mark the beginning and ends of these zones. The remaining sections in Chapter 6F would be renumbered accordingly.

385. In existing Section 6F.15 (new Section 6F.16) Warning Sign Function, Design, and Application, the FHWA proposes to delete the 2nd STANDARD statement and the first three paragraphs of the 3rd OPTION statement, because they provide sign size information that is already contained in Section 6F.02.

386. In Section 6F.16 (new Section 6F.17) Position of Advance Warning Signs, the FHWA proposes to add a paragraph to the first GUIDANCE statement recommending that the ROAD WORK sign be the first advance warning sign encountered by road users when multiple advance warning signs are needed on an approach to a TTC. The FHWA proposes this new language to reflect current practice in which the first sign encountered in advance of a TTC is the most generic sign.

387. In Figure 6F–4 Warning Signs in Temporary Traffic Control Zones, the FHWA proposes to add the STREET WORK, WORKERS, and FRESH OIL word signs to the list of optional word message signs listed next to the asterisk at the bottom of the page. The FHWA proposes this change to provide practitioners with the flexibility to use various word message signs in advance of various types of temporary traffic control zones.

388. The FHWA proposes adding a new section following existing Section 6F.28 (new Section 6F.29) EXIT OPEN, EXIT CLOSED, EXIT ONLY Signs. The proposed new section is numbered and titled ''Section 6F.30 NEW TRAFFIC PATTERN AHEAD Sign (W23–2)'' and contains an OPTION statement describing the use of the NEW TRAFFIC PATTERN AHEAD sign to provide advance warning of a change in traffic patterns, such as revised lane usage, roadway geometry, or signal phasing. The FHWA proposes a phase-in compliance period of 5 years for existing signs in good condition to minimize any impact on State or local highway agencies. The remaining sections in Chapter 6F would be renumbered accordingly. The FHWA proposes this change to reflect current practice in many States and numerous local jurisdictions as documented in the Sign Synthesis Study[184] and to provide a uniform legend for this purpose.

389. In existing Section 6F.29 (new Section 6F.31) Flagger Sign, the FHWA proposes to add an OPTION to allow Flagger signs to remain displayed to road users for up to 15 minutes when flagging operations are not occurring under certain circumstances. The FHWA proposes this change to reflect Official Interpretation #6–200(I), which was issued on September 22, 2004.[185]

390. In existing Section 6F.42 (new Section 6F.44) Shoulder Signs, the FHWA proposes to revise the GUIDANCE statement to include the proposed new symbol version of the Shoulder Drop Off sign and the supplemental plaque to warn road users of a low shoulder to be consistent with this proposed new sign in Chapter 2C.

391. In existing Section 6F.43 (new Section 6F.45) UNEVEN LANES Sign, the FHWA proposes to add an OPTION statement to permit the use of the proposed new Shoulder Drop Off symbol sign with an UNEVEN LANES supplemental plaque instead of the UNEVEN LANES word sign. The FHWA proposes this change to be consistent with proposed changes in Chapter 2C.

[183] The Revised Interim Approval notice can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/pdfs/ia_afads012705.pdf.*

[184] 184 This December 2005 publication (FHWA-HOP–06–074) can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[185] FHWA Official Interpretation # 6–200, dated September 22, 2004, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/pdf/6_200.pdf* .

392. The FHWA proposes adding a new section following existing Section 6F.44 (new Section 6F.46) NO CENTER STRIPE Sign. The proposed new section is numbered and titled ''Section 6F.47 Reverse Curve Signs (W1–4 Series)'' and contains OPTION and STANDARD statements describing the use of the Reverse Curve signs to give road users advance notice of a lane shift. The remaining sections in Chapter 6F would be renumbered accordingly. The FHWA proposes this change to allow for the use of ''single reverse curve'' signs similar to those already allowed in existing Section 6F.45 for ''double reverse curve'' signs.

393. The FHWA proposes relocating the information from existing Section 6F.54 PILOT CAR FOLLOW ME Sign (G20–4), to Section 6C.13 because the information is related specifically to pilot cars, which are covered in Section 6C.13. The remaining sections in Chapter 6F would be renumbered accordingly.

394. In existing Section 6F.55 (new Section 6F.57) Portable Changeable Message Signs, the FHWA proposes to change the first STANDARD statement to a SUPPORT, as well as to add additional information because this statement just provides information, rather than requirements.

The FHWA also proposes to change the 2nd paragraph of the first GUIDANCE statement to a STANDARD in order to require that Portable Changeable Message signs comply with specific chapters and tables in the MUTCD.

The FHWA proposes to revise the last 2 paragraphs of the first GUIDANCE statement to clarify the recommendations for messages and phases. As part of these changes, the FHWA proposes to change the recommended display time for message phases, to expand the recommendations for message lengths and phases and to delete the OPTION statement.

The FHWA also proposes to revise the last GUIDANCE statement to clarify that Portable Changeable Message signs should be placed off the shoulder of the roadway and behind a traffic barrier, if practical. The FHWA also proposes to add additional recommendations regarding the use of Portable Changeable Message signs in temporary traffic control zones.

In addition, the FHWA proposes to add a new STANDARD statement in the middle of the first GUIDANCE statement that describes the requirements for the number of phases and number of lines, placement of messages within each line, techniques for message display and interaction between signs if more than one is simultaneously visible to road users.

The FHWA proposes a phase-in compliance period of 5 years for the new requirements for existing Portable Changeable Message Signs in good condition to minimize any impact on State or local highway agencies.

The FHWA proposes all of the changes in this section to be consistent with the proposed changes for permanent Changeable Message signs as proposed in new Chapter 2M, but with differences to suit the special nature of Portable Changeable Message Signs. These changes are based on extensive research on changeable message sign legibility, messaging, and operations conducted over a period of many years by the Texas Transportation Institute.[186]

395. In Figure 6F–6 Advance Warning Arrow Display Specifications, the FHWA proposes to add an Alternating Diamond display as one of the options for a Flashing Caution display. This type of display has been found effective by experimentation in Utah.[187]

396. In existing Section 6F.58 (new Section 6F.60) Channelizing Devices, the FHWA proposes to add to the first STANDARD statement that all channelizing devices shall be crashworthy. As part of this change, the FHWA proposes to delete from the first GUIDANCE statement the recommendation that channelizing devices be crashworthy because it would conflict with the proposed STANDARD. The FHWA proposes these changes to increase the safety of workers and road users and to be consistent with other crashworthiness requirements throughout Part 6.

The FHWA also proposes to revise the 2nd paragraph of the 2nd STANDARD statement to simplify the requirements for the placement of channelizing devices for channelizing pedestrians. As part of the revisions, the FHWA proposes to change the minimum required height of channelizing devices from 900 mm (36 in) to 800 mm (32 in) to reflect predominant practice. The FHWA also proposes to delete the existing 3rd STANDARD statement because it is repetitive.

The FHWA proposes to add to the first GUIDANCE that where multiple channelizing devices are aligned to form a continuous pedestrian channelizer, connection points should be smooth to optimize long-cane and hand trailing. The FHWA proposes this additional language to provide practitioners with recommendations that will enable visually impaired pedestrians to traverse channelized areas more easily.

In addition, the FHWA proposes adding two new STANDARD statements and an OPTION statement in the middle of this section describing the use of warning lights on channelizing devices. Many different types of lighting methods are currently being used, including flashing, steady-burn, and sequential. Some lighting methods do not provide roadway users with the appropriate message and some are confusing. Therefore, the FHWA proposes this language to provide uniformity in the types of lighting methods used.

397. In Figure 6F–7 Channelizing Devices, the FHWA proposes to specify that the 900 mm (36 in) height of the Direction Indicator Barricade is a minimum height. The ''MIN'' was inadvertently missing in the 2003 MUTCD.

398. In existing Section 6F.60 (new Section 6F.62) Tubular Markers, the FHWA proposes to revise the 3rd paragraph of the first STANDARD to clarify the requirements for reflectorization bands on tubular markers that are less than 1050 mm (42 in) in height as well as for tubular markers that are 1050 mm (42 in) or more in height. The FHWA proposes this language in order to provide more clarity on the width and spacing of reflectorization bands for bands on tubular markers of different heights.

399. In existing Section 6F.61 (new Section 6F.63) Vertical Panels, the FHWA proposes to add to the 2nd paragraph of the first STANDARD statement a requirement that clearance between the bottom of a vertical panel and the roadway shall be a maximum of 300 mm (12 in). The FHWA proposes the change to provide consistency between Figure 6F–7 and the text.

The FHWA also proposes to change the first OPTION statement to a STANDARD to require, rather than merely permit, a panel stripe width of 100 mm (4 in) to be used where the height of the reflective material on a vertical panel is 900 mm (36 in) or less. The FHWA proposes this change to reflect predominant practice and encourage uniformity.

400. In existing Section 6F.62 (new Section 6F.64) Drums, the FHWA proposes changing the first sentence of the second GUIDANCE paragraph to a STANDARD statement to prohibit

[186] Information on the many research projects on changeable message signs conducted by the Texas Transportation Institute (TTI) can be accessed via TTI's Internet Web site at: *http://tti.tamu.edu/*.

[187] ''Dancing Diamonds in Highway Work Zones: Evaluation of Arrow Panel Caution Displays,'' Utah Department of Transportation Report number UT–02.13, dated June 2002, by Saito and Turley, can be viewed at the following Internet Web site: *http://www.dot.state.ut.us/download.php/tid=297/UT–02.13.pdf*.

weighting drums with sand, water, or any material to the extent that would make them hazardous to road users or workers when struck. As part of this change, the FHWA also proposes deleting the remaining sentence of this GUIDANCE statement because drums shall have closed tops (per the last sentence of the first STANDARD statement), which should keep large amounts of water out of the device, therefore, reducing the effects of freezing.

401. In existing Section 6F.63 (new Section 6F.65) Type 1, 2, or 3 Barricades, the FHWA proposes to add a new STANDARD after the 4th paragraph of the first GUIDANCE statement requiring continuous detectible bottom and top rails with no gaps on barricades that are used to channelize pedestrians. In addition, the FHWA proposes to add an OPTION statement following the proposed STANDARD that provides the ability to facilitate drainage between the bottom rail and the ground surface.

402. In existing Section 6F.64 (new Section 6F.66) Direction Indicator Barricades, the FHWA proposes to delete the first Guidance statement because it conflicts with the proposed requirement in existing Section 6F.58 (new Sections 6F.60) that all channelizing devices shall be crashworthy, as discussed in item number 396 above.

403. In existing Section 6F.65 (new Section 6F.67) Temporary Traffic Barriers as Channelizing Devices, the FHWA proposes to change the first paragraph of the GUIDANCE to a STANDARD in order to prohibit, rather than discourage, the use of temporary traffic barriers for a merging taper, except in low-speed urban areas. The FHWA proposes this change to provide consistency on the use of temporary traffic barriers within this section.

The FHWA also proposes to add a STANDARD statement at the end of the section requiring that temporary traffic barriers used to channelize pedestrians meet specific criteria that aid pedestrians with visual disabilities, to be consistent with requirements elsewhere in Part 6.

404. The FHWA proposes retitling existing Section 6F.66 (new Section 6F.68) to ''Longitudinal Channelizing Devices,'' to provide for devices for this purpose other than just barricades. The FHWA also proposes to change the first GUIDANCE statement to a STANDARD in order to require that, if longitudinal channelizing devices are used singly as Type 1, 2, or 3 barricades, they must comply with design and placement characteristics established for the devices in Chapter 6F. The FHWA proposes this change to be consistent with provisions elsewhere in Chapter 6F.

The FHWA also proposes to delete the second paragraph of the first OPTION statement, so as to no longer permit longitudinal channelizing devices to be filled with water as ballast. The FHWA proposes this change to provide consistency throughout Part 6 because the FHWA proposes to no longer allow water to be used as ballast for any channelizing devices.

405. The FHWA proposes to add a new section following existing Section 6F.67 (new Section 6F.69), numbered and titled, ''Section 6F.70 Temporary Lane Separators.'' This new section contains OPTION, STANDARD, and GUIDANCE statements regarding the use of these optional devices that may be used to channelize road users, to divide opposing vehicular traffic lanes, or divide lanes when two or more lanes are open in the same direction, and to provide continuous pedestrian channelization. The FHWA proposes these changes to reflect existing successful practices. The FHWA proposes a phase-in compliance period of 5 years for existing devices in good condition to minimize any impact on State or local highway agencies.

406. In existing Section 6F.69 (new Section 6F.72) Temporary Raised Islands, the FHWA proposes to change the recommended width of temporary raised islands in the GUIDANCE statement from 450 mm (18 in) to 300 mm (12 in). The FHWA proposes this change to facilitate the use of existing devices that have been successfully used in many applications.

407. The FHWA proposes to make several revisions to existing Section 6F.71 (new Section 6F.74) Pavement Markings, and existing Section 6F.72 (new Section 6F.75), retitled, ''Temporary Markings'' to clarify, reduce redundancy, and organize the text in a more logical order. The proposed changes include differentiating the usage of pavement markings in long-term stationary temporary traffic control zones from those used in intermediate-term and shorter temporary traffic control zones. The FHWA proposes to clarify that temporary broken line segments can be shorter than those required for normal permanent broken line markings but that temporary no-passing zone markings must meet the normal standards for permanent markings.

408. In existing Section 6F.73 (new Section 6F.76) retitled ''Temporary Raised Pavement Markers,'' the FHWA proposes to add OPTION, STANDARD, and GUIDANCE statements at the beginning and end of the section to provide more information regarding the color, patterns, and spacing of raised pavement markers in temporary traffic control zones. The proposed changes repeat certain requirements and recommendations from Part 3 and also provide for optional use of temporary short-term (usually no longer than 14 days) use of a less expensive pattern of raised pavement markers to substitute for a broken line marking.

409. The FHWA proposes to delete existing Section 6F.76 Floodlights, because floodlights are not traffic control devices and it is not appropriate for the MUTCD to have regulatory language regarding their design or use. The remaining sections would be renumbered accordingly.

410. The FHWA proposes to delete existing Section 6F.77 Flashing Warning Beacons, because the material is already covered in Chapter 4K and does not need to be repeated in Part 6.

411. The FHWA proposes to delete existing Section 6F.79 Steady-Burn Electric Lamps, because the FHWA believes that most jurisdictions are using other types of warning lights, therefore, making steady-burn electric lamps obsolete.

412. The FHWA proposes to delete the 3rd STANDARD in Section 6F.80 Temporary Traffic Control Signals, because the prohibition against supports for temporary traffic control devices encroaching into pedestrian access routes is covered elsewhere in Part 6 and does not need to be repeated.

In addition, the FHWA proposes adding a new STANDARD at the end of the section requiring temporary traffic signals placed within 60 m (200 ft) of a highway-rail grade crossing or a highway-light rail transit grade crossing to have preemption unless arrangements are made to prevent traffic from queuing across the tracks. The FHWA proposes this change to protect road users from conflicts with rail crossings in TTC zones and to be consistent with provisions in Parts 4 and 8.

413. In Section 6F.81 Temporary Traffic Barriers, the FHWA proposes to add in the STANDARD that temporary traffic barriers, including their end treatments, shall be crashworthy in order to correspond with similar requirements for other roadside devices. The FHWA also proposes to add several paragraphs to the end of the 2nd SUPPORT statement regarding the use of movable barriers, and describing their use in existing Figures 6H–45 and 6H–34 (new Figures 6I–45 and 6I–34). The FHWA proposes to add this text in Chapter 6F and delete existing Section

6G.18 Movable Barriers, so that the information is contained in one location.

414. The FHWA proposes to delete existing Sections 6F.82 Crash Cushions and 6F.83 Vehicle Arresting Systems, because neither crash cushions nor vehicle arresting systems are traffic control devices and it is not appropriate for the MUTCD to have regulatory language regarding their design or use. The FHWA believes that adequate and appropriate guidance on crash cushions and vehicle arresting systems is readily available in a variety of FHWA, AASHTO, ITE, and industry publications and Web sites, such as the FHWA Office of Safety's Roadway Departure Web site (*http://safety.fhwa.dot.gov/roadway_dept/*). The remaining sections would be renumbered accordingly.

415. In existing Section 6F.84 (new Section 6F.82) Rumble Strips, the FHWA proposes to add to the STANDARD statement that black and orange are acceptable colors for transverse rumble strips in TTC zones. The FHWA proposes this change to reflect research showing that in addition to white, the colors black and orange work well in TTC zones.[188]

416. The FHWA proposes to delete Section 6F.85 Screens, because glare screens are not traffic control devices and it is not appropriate for the MUTCD to have regulatory language regarding their design or use. The FHWA believes that adequate and appropriate guidance on glare screens is readily available in a variety of FHWA, AASHTO, ITE, and industry publications and Web sites, such as the FHWA Office of Safety's Roadway Departure Web site (*http://safety.fhwa.dot.gov/roadway_dept/*). The remaining sections would be renumbered accordingly.

417. The FHWA proposes to delete Section 6F.86 Future and Experimental Devices, because such devices are already covered in Part 1.

Discussion of Proposed Amendments Within Chapters 6G Through 6I

418. In Section 6G.01 Typical Applications, the FHWA proposes to add a new GUIDANCE statement recommending that a TTC plan should be developed for all planned special events and approved by the highway agencies having jurisdiction. The FHWA proposes this change to help assure that proper traffic controls are installed when planned special events, such as parades, street fairs, farmers' markets, etc. impact traffic, and to respond to a National Transportation Safety Board (NTSB) report on this subject.[189]

419. In Section 6G.11 Work Within the Traveled Way of Urban Streets, the FHWA proposes to relocate the first sentence of the STANDARD statement to Section 6D.01 because the information about maintaining accessibility and detectability along pedestrian routes is most appropriately covered in Section 6D.01.

420. In Section 6G.12 Work Within the Traveled Way of Multi-Lane, Nonaccess Controlled Highways, the FHWA proposes to reference existing Section 6F.65 (new Section 6F.67) Temporary Traffic Barriers as Channelization Devices in the first GUIDANCE statement, and delete the 2nd STANDARD statement and the first paragraph of the 2nd SUPPORT statement. The FHWA proposes this change to eliminate unnecessary repetition regarding temporary traffic barriers.

421. As discussed in item 413 above, the FHWA proposes to delete existing Section 6G.18 Movable Barriers and place all information regarding movable barriers in Section 6F.81.

422. The FHWA proposes to reverse the order of existing Chapters 6H and 6I so that Chapter 6H would be Control of Traffic Through Traffic Incident Management Areas and Chapter 6I would be Typical Applications. The FHWA proposes this change so that the numerous Typical Application diagrams will be at the end of Part 6 and to enhance the position within Part 6 of the text and figures on incident management.

423. In existing Section 6I.01 (new Section 6H.01) General, the FHWA proposes to add to the STANDARD statement that the Incident Command System (ICS) as required by the National Incident Management System (NIMS) shall be implemented in traffic incident management areas. The FHWA proposes this language per The Department of Homeland Security and Presidential Directives (DHSPD) #5 and #8,[190] which require the adoption of the National Incident Management System and the Incident Command System by all Federal, State, tribal and local governments. These two systems are required for all planned and unplanned incidents in the United States.

The FHWA also proposes to add to the 2nd paragraph of the GUIDANCE statement that all on-scene responders and news media personnel should wear high-visibility apparel. The FHWA proposes this text to incorporate into the MUTCD the provisions of 23 CFR Part 634 regarding high-visibility apparel, as discussed in Section 6D.03 (item 375) above.

424. In existing Sections 6I.02 (new Section 6H.02) Major Traffic Incidents and 6I.03 (new Section 6H.03) Intermediate Traffic Incidents, the FHWA proposes to add OPTION statements near the end of the sections explaining the use of light sticks at incidents. The FHWA proposes these changes to reflect the increasingly common use of light sticks by emergency responders as a more convenient and effective device than flares.

425. In existing Section 6H.01 (new Section 6I.01) Typical Applications, the FHWA proposes changing the Typical Applications to reflect the proposed changes to all parts of the MUTCD with particular reference to proposed Part 6 text and figure changes.

In addition, the FHWA proposes to add clarification to the existing second SUPPORT statement that except for the notes to the typical applications (which are clearly classified using headings as being STANDARD, GUIDANCE, OPTION, or SUPPORT), the information presented in the typical applications can generally be regarded as Guidance. The FHWA proposes this change to provide additional information about the nature of the information in the Typical Application illustrations.

Additionally, the FHWA proposes the following changes to the notes to the figures of typical applications:

a. Notes for existing Figure 6H–4 (new Figure 6I–4): The FHWA proposes adding a new item 4 allowing stationary signs to be omitted if the work is mobile because the use of such signs is often not practical with mobile operations. The FHWA also proposes adding a new item 9 in the STANDARD statement stating that vehicle-mounted signs shall be mounted in a manner such that they are not obscured by equipment or supplies, and that sign legends shall be covered or turned from view when work is not in progress, for consistency with similar provisions in the notes for existing Figure 6H–17 (new Figure 6I–17).

[188] Report No. K-TRAN: KY–02–3 ''Guidelines for the Application of Removable Rumble Strips,'' August 2006 can be viewed at the following Internet Web site: *http://www.ksdot.org/idmws/DocContent.dll?Library=PublicDocs–dt00mx38&ID=003717523&Page=1.*

[189] NTSB Report HAR–04/04, ''Rear End Collision and Subsequent Vehicle Intrusion into Pedestrian Space at Certified Farmers' Market, Santa Monica, California, July 16, 2003'', dated August 3, 2004, can be viewed at the following Internet Web site: *http;//ntsb.gov/publictn/2004/HAR0404.pdf.*

[190] The Department of Homeland Security and Presidential Directives (DHSPD) #5 and 8 can be viewed at Internet Web site addresses: *http://www.whitehouse.gov/news/releases/2003/02/20030228–9.html* and *http://www.whitehouse.gov/news/releases/2003/12/20031217–6.html.*

b. Notes for existing Figures 6H–5, 6H–34, and 6H–36 (new Figures 6I–5, 6I–34, and 6I–36): The FHWA proposes revising the STANDARD statement to indicate that temporary traffic barriers shall comply with the provisions of Section 6F.81. The FHWA proposes this revision to provide users with clear, consistent requirements for the use of temporary traffic barriers.

c. In existing Figures 6H–12 and 6H–14 (new Figures 6I–12 and 6I–14), the FHWA proposes to clarify that the dimension between the nearest signal face for each approach and the stop line should be 45 m (150 ft) for 200 mm (8 in) signal indications and 55 m (180 ft) for 300 mm (12 in) signal indications, for consistency with provisions of Part 4.

d. Also in existing Figure 6H–14 (new Figure 6I–14), the FHWA proposes to delete the NO PASSING ZONE pennant signs and the DO NOT PASS signs because they have been illustrated in an incorrect location and they are not necessary.

e. Notes for existing Figure 6H–16 (new Figure 6I–16): The FHWA proposes to add a new item 1 to the GUIDANCE statement indicating that all lanes should be a minimum of 3 m (10 ft) in width to be consistent with guidance in other applications. The FHWA also proposes deleting existing item 2 regarding spacing of channelizing devices because that information is covered elsewhere in the Manual and does not need to be repeated here.

f. Notes for existing Figures 6H–31 and 6H–36 (new Figures 6I–31 and 6I–36): The FHWA proposes to add to the STANDARD statement to describe the use of the Reverse Curve signs. The FHWA proposes this change to be consistent with the proposed new section numbered and titled ''Section 6F.47 Reverse Curve Signs.'' As part of this change, the FHWA also proposes deleting existing items in the OPTION statements regarding the ALL LANES THRU supplemental plaque because the reverse curve signs graphically indicate that message.

g. Notes for existing Figures 6H–37, 6H–38, 6H–39, 6H–42 and 6H–44 (new Figures 6I–37, 6I–38, 6I–39, 6I–42 and 6I–44): The FHWA proposes adding a STANDARD note that requires an arrow panel be used on all freeway lane closures, and that a separate arrow panel be used for each closed lane when more than one freeway lane is closed. The FHWA believes that an arrow panel is essential for safety at all lane closures on freeways due to the high speeds. The FHWA proposes a phase-in compliance period of 2 years for these arrow board requirements at existing locations to minimize any impact on State or local highway agencies.

h. Notes for existing Figure 6H–38 (new Figure 6I–38): The FHWA also proposes to add a STANDARD note that requires that temporary traffic barriers comply with the provisions and requirements in Section 6F.81. The FHWA proposes this change for consistency with provisions elsewhere in Part 6.

i. In existing Figure 6H–38 (new Figure 6I–38), the FHWA proposes to change the dimension label for the single row of channelizing devices in advance of the traffic split from 30 m (100 ft) ''MAX'' to ''MIN'' to reflect that the distance labeled is the minimum distance, not the maximum distance. The dimension was inadvertently mislabeled in the 2003 MUTCD.

j. Notes for existing Figure 6H–41 (new Figure 6I–41): The FHWA proposes adding to item 3 the recommendation that channelizing devices should be placed to physically close the ramp when an exit is closed. The FHWA proposes this change to reflect existing practice, and provide for positive closure instead of just relying on a sign.

Discussion of Proposed Amendments to Part 7 Traffic Controls for School Areas

Discussion of Proposed Amendments Within Part 7—General

426. The FHWA proposes to change the name of the S1–1 sign from ''School Advance Warning'' to ''School'' sign throughout Part 7 and in Table 7B–1. The FHWA proposes this change in order to simplify the name of the S1–1 sign and to provide flexibility in the sign's application and use of the sign with other signs and plaques to form a sign assembly.

427. The FHWA also proposes changing the name of the ''School Crosswalk Warning Assembly'' to ''School Crossing Assembly'' to simplify its name and to provide additional flexibility in its usage.

428. In Section 7A.04 Scope, the FHWA proposes to relocate the existing OPTION statement to Section 7B.03 because the positioning of in-roadway signs is more consistent with the subject of that section.

429. The FHWA proposes to delete Sections 7A.05 through 7A.10 because the subjects of those sections are already covered in other parts of the Manual. In their place, the FHWA proposes to add a paragraph to the SUPPORT statement to Section 7A.04 providing cross references to the appropriate sections. In addition, the FHWA proposes to add that provisions discussed in Part 3 are applicable in school areas. The FHWA proposes these changes to reduce redundancy in the Manual.

430. The FHWA proposes to add a new section numbered and titled, ''Section 7A.05 Grade-Separated School Crossings'' that contains a SUPPORT statement regarding the use of grade-separated crossings for school pedestrian traffic. Much of the information in this proposed new section was previously covered in existing Chapter 7F Grade Separated Crossings, which the FHWA proposes to delete. The FHWA proposes these changes because grade-separated crossings are not traffic control devices regulated by the MUTCD.

431. In Section 7B.01 Size of School Signs, the FHWA proposes to delete from the second paragraph of the STANDARD statement the phrase ''on public roads, streets, and highways'' because 23 CFR 655.603 [191] now makes the MUTCD apply to more than just public roads and thus makes this phrase inaccurate.

432. In Section 7B.03 Position of Signs, the FHWA proposes to relocate an OPTION statement from Section 7A.04 to this section regarding the use of in-roadway signs because the information is more consistent with the subject of this section.

433. In Section 7B.07 Sign Color for School Warning Signs, the FHWA proposes to revise this section to make the use of fluorescent yellow-green as the background color for all school warning signs and plaques a STANDARD rather than an option. The FHWA proposes to revise the STANDARD statement accordingly, and to delete the associated OPTION and GUIDANCE statements. The FHWA proposes a phase-in compliance period of 10 years for existing school warning signs and plaques in good condition to minimize any impact on State or local highway agencies. The FHWA proposes these changes because the use of fluorescent yellow-green has become predominant practice in most jurisdictions. Fluorescent yellow-green provides enhanced conspicuity for these critical signs, especially in dusk and dawn periods, and the FHWA believes that uniform use of this background color for all school warning signs and plaques will enhance safety and road user recognition. The FHWA proposes to revise the background color of school warning signs and plaques in the figures throughout Part 7 to reflect this proposed change.

434. The FHWA proposes to delete existing Section 7B.08 School Advance

[191] See fn. 3 for more information.

Warning Assembly, and replace it with three new sections numbered and titled, ''Section 7B.08 School Sign,'' ''Section 7B.09 School Area or School Zone Sign,'' and ''Section 7B.10 School Advance Crossing Assembly.'' The remaining sections in Chapter 7B would be renumbered accordingly. As discussed in item 426 above, the FHWA proposes this change in order to provide flexibility in the sign's application and use of the sign with other signs and plaques to form a sign assembly.

435. The FHWA proposes to revise Section 7B.08 to include one SUPPORT statement that describes three specific applications for the School (S1–1) sign. As part of this new SUPPORT, the FHWA proposes to add a new figure numbered and titled, ''Figure 7B–2 Example of Signing for a School Zone,'' that illustrates the use of the School (S1–1) sign and the Fines Higher (R2–6P) plaque. The remaining figures in Chapter 7B would be renumbered accordingly. Proposed new Sections 7B.09 through 7B.11 contain additional STANDARD and OPTION statements for each of the three uses of the S1–1 sign.

436. In proposed Section 7B.09 School Area or School Zone Sign and Section 7B.10 School Advance Crossing Assembly, the FHWA proposes to add an OPTION statement that permits the use of a supplemental arrow plaque on a School (S1–1) sign in locations where a school area/zone or school crosswalk that is located on a cross street less than 38 m (125 ft) from the edge of a street or highway. The FHWA proposes these changes to provide jurisdictions with flexibility for installing signs where there is not sufficient distance for advance signing.

437. In existing Section 7B.09 (new Section 7B.11) School Crossing Assembly, the FHWA proposes to add to the OPTION statement that when used at a school crossing, the In-Street Pedestrian sign may use the schoolchildren symbol (as found on the S1–1 sign), rather than the single pedestrian symbol. The FHWA proposes this change to incorporate Official Interpretation #7–65(I), which was issued on September 6, 2004.[192] The FHWA proposes to show these optional sign designs in existing Figure 7B–4 (new Figure 7B–5).

The FHWA also proposes to add to the OPTION statement to allow the use of the proposed new Overhead Pedestrian Crossing sign (discussed in Chapter 2B) sign at school crossings and to add a complementary restriction to the last STANDARD statement prohibiting the use of this sign at signalized crossings. The FHWA proposes these changes to allow appropriate use of this overhead sign to enhance the safety of school crossings.

438. In existing Section 7B.10 (new Section 7B.12) SCHOOL BUS STOP AHEAD Sign, the FHWA proposes revising the GUIDANCE statement by removing the specific distance of 150 m (500 ft) that a stopped school bus should be visible to road users, and in its place inserting a reference to distances given in Table 2C–4. The FHWA proposes this change because Table 2C–4 provides more detailed information about proper placement of warning signs.

439. In existing Figure 7B–1 School Area Signs, the FHWA proposes to replace the existing School Bus Stop Ahead (S3–1) word message sign with a symbol sign. The FHWA proposes this new sign based on positive experiences in West Virginia, where a symbol sign for this message has been used for 25 to 30 years[193] and in Canada, where it has also been used since the 1970s. The FHWA proposes to use a symbol that is similar to the Canadian MUTCD[194] standard WC–9 symbol. The proposed symbol features a school bus with a depiction of red flashing lights, a bus-mounted STOP sign, and students getting on or off the bus. A recent study[195] found that the proposed symbol sign was better understood than the existing word message sign and that the symbol provides comparable legibility distance. The FHWA believes that the replacement of selected word message signs with well-designed symbol signs will improve safety in view of increasing globalization and non-English speaking road users in the United States. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

The FHWA also proposes to revise the illustration in Figure 7B–1 to clarify that the S4–1 (time) and S4–6 (Monday–Friday) plaques may be used together, but other combinations of plaques are not allowed.

440. The FHWA proposes to add a new Section following existing Section 7B.10 (new Section 7B.13), numbered and titled, ''Section 7B.13 SCHOOL BUS TURN AHEAD Sign (S3–2).'' This new section contains an OPTION statement about the use of this proposed new sign that can be installed in advance of locations where there is a school bus turn around on a roadway at a location not visible to approaching users for a distance as determined in Table 2C–4. The remaining sections in Chapter 7B would be renumbered accordingly. The FHWA also proposes to add a new Figure 7B–1 Illustrating the proposed sign. The FHWA proposes this new sign to provide a standard sign for applications that fit this need. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

441. In existing Section 7B.11 (new Section 7B.14) School Speed Limit Assembly, the FHWA proposes to change the first paragraph of the 2nd OPTION statement to a STANDARD to require, rather than merely permit, fluorescent yellow-green pixels to be used when the ''SCHOOL'' message is displayed on a changeable message sign for a school speed limit. The FHWA proposes this change to be consistent with other proposed changes that require fluorescent yellow-green to be the standard color for school zone warning signs.

442. In existing Section 7B.12 (new Section 7B.15), the FHWA proposes to change the name of the ''Reduced Speed School Zone Ahead'' sign to ''Reduced School Speed Limit Ahead'' sign to be consistent with the Stop Ahead, Yield Ahead, and Signal Ahead sign names and to be consistent with the proposed change in the name of the similar warning sign in Chapter 2C.

443. In existing Section 7B.13 (new Section 7B.16) END SCHOOL ZONE Sign, the FHWA proposes to revise the STANDARD to clarify that the end of a designated school zone shall be marked with both an END SCHOOL ZONE sign and a Speed Limit sign for the section of highway that follows. The FHWA proposes this change to be consistent with proposed changes to Section 7B.08. It is important and sometimes legally necessary to mark the end points of designated school zones. The use of a

[192] FHWA's Official Interpretation 7–65(I), dated September 6, 2004, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/pdf/7_65.pdf.*

[193] For additional information on West Virginia's successful experience with this symbol sign, contact Mr. Ray Lewis, Staff Engineer—Traffic Research and Special Projects Traffic Engineering Division, West Virginia DOT, Division of Highways, phone: 304–558–8912, email: *rlewise@dot.state.wv.us.*

[194] The Manual of Uniform Traffic Control Devices for Canada, 4th Edition, is available for purchase from the Transportation Association of Canada, 2323 St. Laurent Boulevard, Ottawa, Ontario K1G 4J8 Canada, Web site *http://www.tac-atc.ca.*

[195] Preliminary results from ''Evaluations of Symbol Signs,'' conducted by Bryan Katz, Gene Hawkins, and Jason Kennedy for the Traffic Control Devices Pooled Fund Study, can be viewed at the following Internet Web site: *http://www.pooledfund.org/documents/TPF–5_065/PresSymbolSign.pdf.*

Speed Limit sign showing the speed limit for the following section of highway is required by existing section 2B.13. The FHWA also proposes to modify figures in Chapter 7B to reflect these proposed changes. The FHWA proposes a phase-in compliance period of 10 years for installation of END SCHOOL ZONE signs at existing locations to minimize any impact on state or local highway agencies.

444. In Section 7C.03 Crosswalk Markings, the FHWA proposes to add a 5th paragraph to the first GUIDANCE statement recommending that warning signs be installed for marked crosswalks at nonintersection locations, and adequate visibility be provided by implementing parking prohibitions. The FHWA proposes this change to be consistent with a similar proposed change in existing Section 3B.17 (new Section 3B.18).

In addition, the FHWA proposes to add to the 2nd GUIDANCE statement, a recommendation that the spacing between diagonal or longitudinal lines should not exceed 2.5 times the line width. The FHWA proposes this change to be consistent with existing text in Section 3B.17.

445. In Section 7C.04 Stop and Yield Lines, the FHWA proposes to incorporate several changes to be consistent with proposed changes to Section 3B.16 with the same title. See item 262 for more information.

446. In Section 7C.05 Curb Markings for Parking Regulations, the FHWA proposes to add to the OPTION statement that curb markings without word markings or signs may be used to convey a general prohibition by statute of parking within a specified distance of a STOP sign, driveway, fire hydrant, or crosswalk. The proposed text is already contained in existing Section 3B.21 (new Section 3B.22), and the FHWA believes it is important to restate it in Section 7C.05 for emphasis and consistency.

447. In Section 7C.06 Pavement Word and Symbol Markings, the FHWA proposes to revise this section to provide consistency with Section 3B.19 (new Section 3B.20).

448. The FHWA proposes to delete existing Chapter 7D Signals because it is a small chapter whose only purpose is to provide reference to Part 4 and Section 4C.06. The FHWA proposes to incorporate the references in Section 7A.04 instead. The FHWA would reletter the remaining chapters accordingly.

449. In existing Section 7E.01 (new Section 7D.01) Types of Crossing Supervision, the FHWA proposes to delete the reference document, ''Civilian Guards for School Crossings'' from the 2nd paragraph of the SUPPORT statement because Northwestern University is phasing out such publications and it will not be available in the future.

450. In existing Section 7E.03 (new Section 7D.03) Qualifications of Adult Crossing Guards, the FHWA proposes to revise the GUIDANCE statement to indicate that the list represents the minimum qualifications of adult crossing guards. In addition, the FHWA proposes to add three additional qualifications (new items C, D, and E) that are similar to applicable provisions in Section 6E.01 for flaggers.

451. In existing Section 7E.04 (new Section 7D.04) Uniform of Adult Crossing Guards and Student Patrols, the FHWA proposes to delete ''and Student Patrols'' from the title of the section and to delete the second paragraph of the STANDARD statement, which relates to the apparel worn by student patrols. The FHWA believes that student patrols do not control vehicular traffic and provisions relating to student patrols are not appropriate for the MUTCD. The FHWA also proposes to delete the first GUIDANCE statement because most adult crossing guards do not wear a uniform. In addition, as part of proposed changes to the STANDARD statement, the GUIDANCE statement is no longer necessary. The FHWA proposes to revise the STANDARD statement to reflect that law enforcement officers performing school crossing supervision shall use high-visibility safety apparel labeled as ANSI 107–2004. The FHWA proposes these changes to incorporate into the MUTCD the provisions of 23 CFR Part 634 that were published in the **Federal Register** on November 24, 2006.[196] As part of these proposed changes, the FHWA proposes to delete the second GUIDANCE statement because it is superseded by the new proposed statements discussed above. The FHWA proposes a phase-in compliance period of 2 years for crossing guard apparel on non-Federal-aid highways to minimize any impact on state or local highway agencies. A compliance date of November 24, 2008, has already been established for worker apparel on Federal-aid highways as a result of 23 CFR Part 634.

452. In existing Section 7E.05 (new Section 7D.05) Operating Procedures for Adult Crossing Guards, the FHWA proposes to change the GUIDANCE statement to a STANDARD, thereby making all of the paragraphs requirements, rather than recommendations. Because the safety of school children is paramount, it is important that adult crossing guards follow specific requirements when controlling traffic for the purpose of assisting school children.

453. The FHWA proposes to delete existing Section 7E.06 Uniformed Law Enforcement Officers, because the information is covered in existing Section 7E.01 (new Section 7D.01). The remaining sections would be renumbered accordingly.

454. The FHWA proposes to delete existing Sections 7E.07, 7E.08, and 7E.09 because these sections pertain to student patrols. The FHWA believes that student patrols do not control vehicular traffic and provisions relating to student patrols are not appropriate for the MUTCD. The FHWA believes that adequate and appropriate guidance on student patrols is readily available from other sources, such as the American Automobile Association's ''School Safety Patrol Operations Manual.''[197]

455. The FHWA proposes to delete existing Chapter 7F Grade Separated Crossings, because the information from that chapter is to be covered by the proposed changes to Section 7A.05. (See item 430 above.)

Discussion of Proposed Amendments to Part 8 Traffic Controls for Highway-Rail Grade Crossings

456. In Section 8A.01 Introduction, the FHWA proposes to add the following definitions: ''Constant Warning Time Train Detection,'' ''Diagnostic Team,'' ''Locomotive Horn,'' ''Pathway-Rail Grade Crossing,'' ''Quiet Zone,'' ''Station Crossing,'' and ''Wayside Horn.'' The FHWA proposes adding these definitions because these words are used in Part 8 and have not previously been defined.

457. The FHWA proposes to add a new section following existing Section 8A.04. The new section is numbered and titled, ''Section 8A.05 Illumination at Highway-Rail Grade Crossings'' and contains information previously included in existing Chapter 8C. The FHWA proposes to change the designation of the text in this section to SUPPORT because illumination is not a traffic control device and thus should not be regulated by GUIDANCE and OPTION language. The FHWA believes

[196] The **Federal Register** Notice was published in the **Federal Register** on November 24, 2006 (Volume 71, Number 226, Page 67792–67800) and can be viewed at the following Internet Web site: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2006_register&docid=E6-19910.pdf.*

[197] This 2004 publication can be viewed at the following Internet Web site: *http://www.aaa.com/aaa/049/PublicAffairs/SSPManual.pdf.*

that adequate and appropriate guidance on illumination of highway-rail grade crossings is readily available from other sources, such as the ANSI's Practice for Roadway Lighting RP–8, available from the Illuminating Engineering Society of North America.[198]

458. The FHWA proposes to make several changes throughout Chapter 8B Signs and Markings, to require that a YIELD sign or STOP sign be installed at all passive highway-rail grade crossings, except where train crews always provide flagging of the crossing to road users. The FHWA proposes this change to incorporate information from FHWA's Policy Memorandum, ''Guidance for Use of YIELD or STOP Signs with the Crossbuck Sign at Passive Highway-Rail Grade Crossings,'' [199] dated March 17, 2006, into the MUTCD. The FHWA proposes to strengthen the language to a STANDARD in the MUTCD from the informational guidance contained in the policy memo, to require, rather than recommend, the use of YIELD or STOP signs in conjunction with the Crossbuck sign at all passive crossings except where train crews always provide flagging to road users. While the Crossbuck sign is in fact a regulatory sign that requires vehicles to yield to trains and stop if necessary, recent research [200] indicates insufficient road user understanding of and compliance with that regulatory requirement when just the Crossbuck sign is present at passive crossings. The FHWA proposes a phase-in compliance period of 5 years for existing locations to minimize any impact on State or local highway agencies.

459. The FHWA proposes to revise existing Figures 8B–1 and 8B–6, and to add a new figure, numbered and titled, ''Figure 8B–2 Highway-Rail Grade Crossings (Crossbuck) Regulatory Signs with Separate Posts'' to reflect the proposed requirement to install a YIELD sign or STOP sign at all passive highway rail-grade crossings, except where train crews always provide flagging of the crossing to road users. The remaining existing Figures in Chapter 8B would be renumbered accordingly.

460. In Section 8B.03 Highway-Rail Grade Crossing (Crossbuck) Sign and Number of Tracks Plaque, the FHWA proposes to add an OPTION statement that allows the Crossbuck sign to have reflectorized red lettering, rather than the standard black lettering, at non-signalized crossings. The FHWA proposes this change to emphasize that the Crossbuck assigns the right-of-way to rail traffic at a highway-rail grade crossing.

The FHWA also proposes to revise the 3rd paragraph of the 3rd STANDARD statement, and the associated figure, to indicate that measurement for the retroreflective strip that is placed on the front and back of the support for the Crossbuck or Number of Tracks sign is to be from the ground, rather than the roadway. The FHWA proposes this change because there may be some cases where the ground level at the base of the sign is higher than the edge of the roadway.

461. The FHWA proposes to relocate and retitle existing Section 8B.08 to be, ''Section 8B.04 Use and Meaning of STOP or YIELD Signs at Passive Highway-Rail Grade Crossings.'' The FHWA proposes replacing all of the existing text with new text that describes the use of STOP and YIELD Signs at passive highway-rail grade crossings, as proposed in item 458 above.

462. The FHWA also proposes to add a new section numbered and titled, ''Section 8B.05 Crossbuck Assemblies with YIELD Signs or STOP Signs at Passive Highway-Rail Grade Crossings'' to provide information on the use of the Crossbuck Assemblies as proposed in item 458 above. The remaining sections would be renumbered accordingly.

463. In existing Section 8B.04 (new Section 8B.06) Highway-Rail Grade Crossing Advance Warning Signs, the FHWA proposes to add to the first STANDARD statement a requirement that a supplemental plaque describing the type of traffic control at the highway-rail grade crossing shall be used with the Highway-Rail Grade Crossing Advance Warning sign (W10–1). As part of this proposed change, the FHWA proposes to require the use of a No Signal (W10–10P) supplemental plaque in advance of a crossing that does not have active traffic control devices, and the use of a new Signal Ahead (W10–16P) plaque in advance of a crossing that does have active traffic control devices. The FHWA proposes a phase-in compliance period of 5 years for existing locations to minimize any impact on State or local highway agencies. The FHWA proposes to add the new Signal Ahead (W10–16P) plaque to existing Figure 8B–2 (new Figure 8B–3) and Table 8B–1.

In addition, the FHWA proposes to add at the end of the 1st STANDARD statement that a Yield Ahead or a Stop Ahead Advance Warning Sign shall also be installed if criteria are met, along with information regarding the distance between signs in advance of a highway-rail grade crossing, to emphasize existing requirements in Part 2.

The FHWA proposes these changes to improve safety by providing road users with additional information regarding traffic control devices at highway-rail grade crossings, as recommended by recent research.[201] Because of these proposed changes, the FHWA proposes to delete existing Section 8B.15 because the information from that section would be included in the revisions to Section 8B.04.

In concert with the above proposed changes, the FHWA proposes to add to the 2nd STANDARD statement a requirement that a supplemental plaque describing the type of traffic control at a highway-rail grade crossing also be used with W10–2, W10–3, and W10–4 warning signs where the distance between the railroad tracks and a parallel highway is less than 30 m (100 ft). In these situations, the distance to the tracks does not allow for the use of a W10–1 sign, but the additional information provided by the supplemental plaques is just as important.

464. In existing Section 8B.10 (new Section 8B.11) STOP HERE WHEN FLASHING Sign, the FHWA proposes to add a new sign designated R8–10a. This proposed sign is similar in design and size to the existing R10–6a sign. The FHWA proposes this new sign in order to provide a 600 mm × 750 mm (24 in. × 30 in.) alternate to the R8–10 sign. The FHWA proposes to add both the proposed new R8–10a sign and the existing R10–6a signs to Table 8B–1.

465. The FHWA proposes to rewrite existing Section 8B.12 (new Section 8B.13) Emergency Notification Sign in its entirety. The proposed text includes STANDARD statements that specify the minimum amount of information to be placed on Emergency Notification signs, sign placement, and the proposed sign color of a white legend and border on a blue background. The proposed new

[198] Information on obtaining this publication can be viewed on the following Internet Web site: *https://www.iesna.org/.*

[199] FHWA's Policy Memorandum, ''Guidance for Use of YIELD or STOP Signs with the Crossbuck Sign at Passive Highway-Rail Grade Crossings,'' dated March 17, 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/policy/yieldstop_guidememo/yieldstop_policy.htm*

[200] National Cooperative Highway Research Report 470 titled ''Traffic Control Devices for Passive Railroad-Highway Grade Crossings,'' Transportation Research Board, 2002, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_470-a.pdf.*

[201] National Cooperative Highway Research Report 470 titled ''Traffic Control Devices for Passive Railroad-Highway Grade Crossings,'' Transportation Research Board, 2002, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_470-a.pdf.*

text includes an OPTION statement that allows similar information to be displayed on the enclosure for signal apparatus at crossings that are equipped with active traffic control devices. The proposed new text also includes a GUIDANCE statement with additional information on sign retroreflectivity, sign placement, and sign size. To illustrate the proposed change, FHWA would revise Figure 8B–4 and Table 8B–1 accordingly. The FHWA proposes these changes to simplify the requirements for these signs and to assure that the appropriate information is displayed on these valuable signs that provide information to roadway users in the event of an emergency or signal malfunction requiring notification to the railroad. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

466. The FHWA proposes to delete existing Section 8B.15 because the information from this section is included in the proposed revisions to Section 8B.04. See item 461 above.

467. The FHWA proposes to revise Section 8B.16 LOOK Sign to indicate that the LOOK sign may be mounted on a separate sign post (rather than to give the option of mounting it as a supplemental plaque on the Crossbuck sign) in the immediate vicinity of the highway-rail grade crossing on the railroad right-of-way. The FHWA proposes this change because other proposed changes require other signs to be placed on the Crossbuck assembly and there would be insufficient space for the LOOK sign.

468. In Section 8B.21 Stop Lines, the FHWA proposes to add a STANDARD statement requiring the use of stop lines on paved roadways at highway-rail grade crossings that are equipped with active control devices. This requirement is currently implied by STANDARD language in Section 8B.20 and illustrated in Figure 8B–6. The FHWA proposes to add this specific requirement in Section 8B.21 for clarification and because the stop line provides road users with a clear indication of the point behind which they are required to stop when the traffic control devices are activated.

469. The FHWA proposes to delete existing Chapter 8C Illumination, and place the information from this Section in a new Section numbered and titled, ''Section 8A.05 Illumination at Highway-Rail Grade Crossings.'' See item 457 above. The remaining Chapters in Part 8 would be relettered accordingly.

470. In existing Section 8D.03 (new Section 8C.03) Flashing-Light Signals, Overhead Structures, the FHWA proposes to add to the STANDARD statement that except as noted in this section, flashing-light signals mounted overhead shall comply with the applicable provisions of new Section 8C.02. The FHWA proposes this change to clarify that the requirement in existing Section 8D.02 (new Section 8C.02) for back-to-back pairs of flashing-light signals on each side of the tracks when there is highway traffic in both directions applies also to overhead mounted flashing light signals.

471. In existing Section 8D.04 (new Section 8C.04) Automatic Gates, the FHWA proposes to revise the 4th paragraph of the STANDARD statement to indicate that the stripes on gate arms shall be vertical, rather than 45-degree diagonal. The FHWA would change the stripes on Figures 8C–1, 10D–3, and 10D–4 accordingly. The diagonal stripes tend to encourage road users to drive around the gates because diagonal stripes are used on other devices such as barricades, object markers, etc. to indicate the direction in which road users are expected to change their path of travel. The FHWA proposes a phase-in compliance period of 10 years for existing stripes on gate arms in good condition to minimize any impact on State or local highway agencies or railroad companies.

472. The FHWA proposes to add a new section after existing Section 8D.05 (new Section 8C.05) numbered and titled, ''Section 8C.06 Wayside Horn Systems.'' This new section contains OPTION, STANDARD, and GUIDANCE statements regarding the use of wayside horn systems to provide directional audible warning at highway-rail grade crossings pursuant to the Interim Approval for the Use of Wayside Horn Systems, issued August 2, 2004.[202] The Interim Approval and proposed MUTCD text support the Final Rule adopted by Federal Railroad Administration mandating the sounding of locomotive horns at highway-rail grade crossings (49 CFR Part 222).[203] The FHWA would renumber the remaining sections in this chapter accordingly. The FHWA proposes a phase-in compliance period of 5 years for existing locations to minimize any impact on State or local highway agencies.

473. In existing Section 8D.07 (new Section 8C.08) Traffic Control Signals at or Near Highway-Rail Grade Crossings, the FHWA proposes to add a 3rd paragraph to the GUIDANCE statement recommending that back-up power be supplied to traffic control signals that have railroad preemption or that are coordinated with flashing-light signal systems at a highway-rail grade crossing. The FHWA proposes to add this recommendation because railroad flashing-light signals are typically provided with standby power supply to ensure their operation during power outages and it is important that traffic signals at or near the crossings also be provided with standby power during power outages to help prevent vehicles from queuing on approaches crossing tracks. The FHWA proposes a phase-in compliance period of 10 years for existing locations to minimize any impact on State or local highway agencies.

In addition, the FHWA proposes to add a 4th paragraph to the GUIDANCE statement to conform with Section 8A.01, which states that the highway agency or authority with jurisdiction and the regulatory agency with statutory authority jointly determine the need and selection of devices at a highway-rail grade crossing. In conjunction with that proposed change, the FHWA proposes to add to the 2nd STANDARD statement to clarify that the timing parameters must be furnished by the jurisdiction so that the railroad will be able to design the train detection circuitry. The FHWA proposes these changes, because railroads often do not have the expertise or the authority to determine the preemption operation and timing of the traffic signals.

Finally, the FHWA proposes to add to the last SUPPORT statement to provide a cross-reference to the proposed new Section 4C.10, which describes the Intersection Near a Highway-Rail Grade Crossing signal warrant that is intended for use at a location where the proximity to the intersection of a highway-rail grade crossing on an intersection approach controlled by a STOP or YIELD sign is the principal reason to consider installing a traffic control signal.

474. The FHWA proposes to add a new section following existing Section 8D.07 (new Section 8C.08) numbered and titled, ''Section 8C.09 Highway-Rail Grade Crossing(s) Within or In Close Proximity to Roundabouts, Traffic Circles, or Circular Intersections.'' This new section contains SUPPORT, STANDARD, and GUIDANCE

[202] The Interim Approval can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/res-ia_waysidehorns.htm.*

[203] The **Federal Register** Notice was published on December 18, 2003, (Volume 68, Number 243, Page 70586–70687) and can be viewed at the following Internet Web site: *http://www.fra.dot.gov/downloads/Safety/train_horn_rule/fed_reg_trainhorns_final.pdf.*

statements that clarify the need for active traffic control devices where highway-rail grade crossings are within or in close proximity to roundabouts, traffic circles or circular intersections. The FHWA proposes a phase-in compliance period of 5 years for traffic control devices in good condition at existing locations to minimize any impact on State or local highway agencies.

475. The FHWA proposes to add a new Chapter titled, ''Chapter 8D Quiet Zone Treatments at Highway-Rail Grade Crossings.'' The purpose of this new Chapter is to add language to support and directly refer to the Final Rule adopted by Federal Railroad Administration regarding quiet zones established in conjunction with restrictions on train horns at certain highway-rail grade crossings (49 CFR Part 222).[204]

476. The FHWA proposes to add a new Chapter titled, ''Chapter 8E Pathway-Rail Grade Crossings.'' The purpose of this new Chapter is to provide information for traffic control devices used at pathway-rail grade crossings. Shared-use paths and other similar facilities often cross railroad tracks and it is important that suitable traffic control devices be used to provide for safe and effective operation of such crossings. The FHWA proposes a phase-in compliance period of 5 years for existing locations to minimize any impact on State or local highway agencies.

Discussion of Proposed Amendments to Part 9 Traffic Controls for Bicycle Facilities

477. In Section 9A.03 Definitions Relating to Bicycles, the FHWA proposes to change the definition of ''bicycle lane'' to indicate that a bicycle lane is to be designated by pavement markings, and that signs may be used to supplement the markings designating a bicycle lane, but they are not required. The FHWA proposes this change to be consistent with proposed changes in Sections 1A.13 and 9B.04. The FHWA also proposes to delete the second sentence of the definition of ''Designed Bicycle Route'' and relocate this text to existing Section 9B.20 (new Section 9B.21) where it is more appropriate.

478. In Section 9B.01 Application and Placement of Signs, the FHWA proposes to revise the STANDARD statement to indicate that no portion of a sign or its support shall be placed less than 0.6 m (2 ft) laterally from the near edge of the path, or less than 2.4 m (8 ft) vertically over the entire width of the shared-use path. As part of this change, the FHWA proposes to remove the requirement that signs be placed a maximum of 1.8 m (6 ft) from the near edge of a path. The FHWA proposes this change to be more consistent with Part 2 and in response to feedback from practitioners that the existing MUTCD standards for sign height and offset can restrict the ability of agencies to effectively install signs on many shared-use path locations. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies. The FHWA also proposes to modify Figure 9B–1 to illustrate the proposed minimum vertical offset information for overhead mounted signs.

In addition, the FHWA proposes to add to the GUIDANCE statement that the clearance for overhead signs on shared-use paths should be adjusted to accommodate path users requiring more clearance, such as equestrians or typical maintenance or emergency vehicles.

479. In Section 9B.04, retitled Bike Lane Signs and Plaques, the FHWA proposes to revise the STANDARD and GUIDANCE statements to clarify that Bike Lane signs are not required along bicycle lanes, and to give recommendations on the placement of Bike Lane signs and plaques when they are used. Whether the presence or absence of the Bicycle Lane sign provides a clearly measurable benefit in indicating a designated bicycle lane has not been conclusively demonstrated. Amending the MUTCD to make the use of Bicycle Lane signs with marked bicycle lanes a recommended, rather than a mandatory, condition would provide flexibility for jurisdictions that do not desire to use the Bicycle Lane sign, without restricting the ability of jurisdictions that prefer to use the signs to continue to do so. These changes are consistent with proposed changes to the definition of ''bicycle lane'' as discussed in item 477 above.

480. The FHWA proposes to add a new section following Section 9B.05 numbered and titled, ''Section 9B.06 Bicycles May Use Full Lane Sign (R4–11).'' This Section includes OPTION and SUPPORT statements regarding the use of this proposed new sign, which is illustrated in Figure 9B–2. The FHWA proposes this new sign, and accompanying text and figure, to provide jurisdictions with a consistent sign design, along with application information, for locations where it is important to inform road users that the travel lanes are too narrow for bicyclists and motor vehicles to operate side by side. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

481. The FHWA proposes to change the title of existing Section 9B.08 (new Section 9B.09) to ''Selective Exclusion Signs'' and add new text regarding the exclusion of various designated types of traffic from using particular roadways or facilities. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies. As part of the change, the FHWA proposes to add No Skaters (R9–13) and No Equestrians (R9–14) signs to the text and to Figure 9B–2.

482. In existing Section 9B.10 (new Section 9B.11) Bicycle Regulatory Signs, the FHWA proposes to add information about three proposed new signs for bicycle pushbuttons, consistent with similar proposed text in Chapter 2B.

483. In existing Section 9B.17 (new Section 9B.18), which the FHWA proposes to retitle, ''Bicycle Warning and Combined Bicycle/Pedestrian Signs,'' the FHWA proposes to add an OPTION statement permitting the use of the proposed new Combined Bicycle/Pedestrian (W11–15) sign where both bicyclists and pedestrians might be crossing the roadway, such as at an intersection with a shared-use path. Further discussion of this proposed sign can be found above in the discussion of existing Section 2C.40 (new Section 2C.51). The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

The FHWA proposes to permit a TRAIL XING (W11–15P) supplemental plaque to be mounted below the W11–15 sign. The FHWA also proposes to illustrate this configuration in Figure 9B–3. The FHWA proposes these changes to be consistent with Chapter 2C.

484. In existing Section 9B.18 (new Section 9B.19) Other Bicycle Warning Signs, the FHWA proposes to change the legend on the W5–4a sign from ''BIKEWAY NARROWS'' to ''PATH NARROWS.'' The FHWA proposes this change because shared-use paths are the only bikeway type on which the W5–4a sign is used, therefore, use on other types of bikeways would be inappropriate or confusing, and should not be encouraged. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on

[204] The **Federal Register** Notice was published on December 18, 2003 (Volume 68, Number 243, Page 70586–70687) and can be viewed at the following Internet Web site: *http://www.fra.dot.gov/downloads/Safety/train_horn_rule/fed_reg_trainhorns_final.pdf.*

State or local highway agencies. In conjunction with the proposed change in the text, FHWA proposes to make the appropriate change in Table 9B–1.

485. In existing Section 9B.19 (new Section 9B.20), the FHWA proposes to retitle the section ''Bicycle Guide Signs'' and add several new signs, along with information on their use. The FHWA proposes these changes to provide flexibility and potentially reduce costs for signing bicycle routes in urban areas where multiple routes intersect or overlap. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies. Along with additional text regarding the use of the proposed new Alternative Bike Route Guide (D11–1c) and Bicycle Destination signs (D1–1b, D1–1c, D1–2b, D1–2c, D1–3b, and D1–3c), the FHWA proposes adding the various new signs to Table 9B–1 and Figure 9B–4.

486. In existing Section 9B.20 (new Section 9B.21) Bicycle Route Signs, the FHWA proposes to add a new Bicycle Route (M1–8a) sign that retains the clear, simple, and uniform design of the M1–8 sign, but provides an area near the top of the panel to include a pictograph or words that are associated with the route or with the agency that has jurisdiction over the route. There has been a significant amount of interest in allowing agencies to develop unique or distinctive route number signs for bicycle routes, in much the same way that States use distinctive M1–5 signs for State highways. However, this could lead to route sign designs that are unclear and non-uniform. As a result, the FHWA proposes the new M1–8a sign to provide a clear, uniform sign. The M1–8 sign would continue to remain in the MUTCD for use when agencies do not wish to use a distinctive pictograph, symbol, or wording. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies.

In addition, the FHWA proposes to change the existing 2nd OPTION statement to a GUIDANCE to recommend, rather than merely permit, a U.S. Bicycle Route number designation be requested from AASHTO for a designated bicycle route that extends through two or more States. The FHWA also proposes to add this GUIDANCE the text relocated from the definition of ''designated bicycle route'' in Section 9A.03 regarding continuous routing of bicycle routes, as discussed above in item 478.

Finally, the FHWA proposes to revise the design of the U.S. Bike Route Sign in Figure 9B–4 so that a larger bicycle is shown on the top part of the sign with a smaller number below it. The reason for the change is to present an immediate impression of a ''bicycle numbered route'' rather than a ''highway numbered route which can also be used by bicyclists'' and to provide consistency with AASHTO's recommended design for the sign.

487. The FHWA proposes to change the title of existing Section 9B.21 (new Section 9B.22) to ''Bicycle Route Sign Auxiliary Plaques'' and to revise the content of the section considerably. As part of the changes, the FHWA proposes to revise the size and design of the M4–11 BEGIN plaque to be consistent with similar M4 series auxiliary signs in Part 9. The FHWA also proposes to delete the M4–12 and M4–13 plaques from this section and Figure 9B–4 because these duplicate the M4–6 and M4–5 auxiliary signs. In addition, FHWA proposes to delete the M7 series arrow plaques from this section and Figure 9B–4 because these duplicate the proposed new sizes of the M5 and M6 auxiliary signs. The FHWA also proposes to add 300 mm × 150 mm (12 in × 6 in) sizes for selected M3 and M4 series auxiliary signs, and add 300 mm × 225 mm (12 in × 9 in) sizes for all M5 and M6 series auxiliary signs, and to refer to these smaller sizes in this section, Table 9B–1, and Figure 9B–4. These smaller sizes will be suitable for use with M1–8, M1–8a, and M1–9 signs. These proposed changes will ensure that route auxiliary designations are consistent between Part 2 and Part 9.

488. The FHWA proposes to replace existing Figure 9B–6 with a new Figure 9B–6 titled, ''Example of Bicycle Guide Signing'' that illustrates an example of guide signing for bicycles, including the Bicycle Destination signs.

489. The FHWA proposes to add three new sections following existing Section 9B.22 (new Section 9B.23) Bicycle Parking Area Sign. The first proposed new section is numbered and titled, ''Section 9B.24 Reference Location Signs and Intermediate Reference Location Signs'' and contains information regarding the use of the signs on shared-use paths. Reference Location signs (formerly called mileposts) have been defined in Chapter 2D of the MUTCD since 1971, and have proven extraordinarily valuable for traveler information, maintenance and operations, emergency response, and numerous other applications. The linear nature of many shared-use paths would seem to also naturally lend itself to the application of Reference Location signs. However, the use and design of such signs has not yet been explicitly addressed in Part 9 of the MUTCD. Defining a standard and uniform design could provide more uniform traveler guidance, reduce the proliferation of non-standard reference location signs, and encourage the use of these signs where desirable and appropriate. The proposed signs would be proportionately sized for the lower operating speeds of shared-use paths, using a 150 mm (6 in) wide panel with 113 mm (4.5 in) numerals. The proposed text is adapted directly from existing Section 2D.46 defining the use of these signs for conventional roadways. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies. In addition to revising the text, the FHWA proposes to revise Figure 9B–4 and Table 9B–1 to include the use of these signs.

490. The second proposed new section is numbered and titled, ''Section 9B.25 Mode-Specific Guide Signs for Shared-Use Paths'' and contains information regarding the use of signs to guide different types of users to separate pathways where they are available. Currently, the Manual provides tools only to prohibit user types, not to show which user types are permitted. As a result, jurisdictions are commonly installing varied, non-standard mode permission signs. The proposed changes are intended to provide clarity and uniformity for mode-specific guide signs on shared-use paths by adding five new signs to the MUTCD. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies. In addition to adding the new signs to Figure 9B–4 and Table 9B–1, the FHWA proposes to add Figure 9B–8 ''Example of Mode-Specific Guide Signs on Shared-Use Paths'' to illustrate the use of the proposed signs.

491. The third proposed new section is numbered and titled, ''Section 9B.26 Object Markers.'' The FHWA proposes to relocate the text and figures from Section 9C.03 to this section, to be consistent with a similar proposed move of object markers from Part 3 to Part 2.

492. In Section 9C.03 Marking Patterns and Colors on Shared-Use Paths, the FHWA proposes to relocate the last five paragraphs to new Section 9B.26 as discussed in item 491 above.

493. In Section 9C.04 Markings for Bicycle Lanes, the FHWA proposes several changes in this Section to correspond with proposed changes to the definition of ''bicycle lane'' in Section 1A.13 (item 477 above) and

signs and plaques for bike lanes in Section 9B.04.

In addition, the FHWA proposes to expand the last STANDARD statement to include ''other circular intersections'' as locations where bicycle lanes are prohibited. The FHWA proposes this additional language to clarify that in addition to being prohibited on the circular roadway of a roundabout, bicycle lanes are not to be provided on the circular roadway of other circular intersections.

494. The FHWA proposes to add a new section at the end of Chapter 9C numbered and titled, ''Section 9C.07 Shared Lane Marking.'' This new section contains OPTION, GUIDANCE, and STANDARD statements regarding the use of a proposed new Shared Lane Marking. This proposed new pavement marking indicates the legal and appropriate bicyclist line of travel, and cues motorists to pass with sufficient clearance, and is based on field research conducted in San Francisco, California.[205] The purpose of this proposed new marking is to reduce the number and severity of bicycle-vehicular crashes, particularly crashes involving bicycles colliding with suddenly opened doors of parked vehicles. The FHWA proposes a phase-in compliance period of 5 years for existing pavement markings in good condition to minimize any impact on State or local highway agencies. In addition to the text, the FHWA proposes to illustrate the appropriate use of the marking in a new figure, titled, ''Figure 9C–9 Shared Lane Marking.''

Discussion of Proposed Amendments to Part 10 Traffic Controls for Highway-Light Rail Grade Crossings

495. The FHWA proposes to add a new section following existing Section 10A.04. The new section is numbered and titled, ''Section 10A.05 Illumination at Highway-Light Rail Transit Crossings'' and contains information previously included in existing Section 10C.22. The FHWA proposes to change the designation of the text in this section to SUPPORT because illumination is not a traffic control device and thus should not be regulated by GUIDANCE and OPTION language. A similar change is proposed in Part 8—see item 457 above.

496. In Section 10B.01 Introduction, the FHWA proposes to add to the STANDARD and OPTION statements that Crossbuck Assemblies are also appropriate traffic control devices at highway-light rail transit grade crossings in semi-exclusive alignments, if an engineering study indicates that their use would be adequate. The FHWA also proposes to add to the last SUPPORT statement that Section 8B.04 and Figures 8B–1, 8B–2, and 8B–6 contain information regarding the use and placement of Crossbuck Assemblies. The FHWA proposes these changes for consistency with changes in Part 8 as discussed in item 458 above.

497. In Section 10C.02, which the FHWA proposes to re-title ''Use of Crossbuck Assemblies at Passive Highway-Light Rail Transit Grade Crossings,'' the FHWA proposes to add an OPTION that allows the Crossbuck sign to have reflectorized red lettering, rather than the standard black lettering, at non-signalized crossings. The FHWA proposes this change to emphasize that the Crossbuck assigns the right-of-way to LRT traffic at a highway-light rail transit grade crossing.

The FHWA also proposes to delete the requirement that Crossbuck signs be used on each highway approach to every highway-light rail transit grade crossing on a semi-exclusive alignment from the STANDARD statement. The FHWA proposes this change to reflect standard practice with most light rail transit agencies in the U.S. Crossbuck signs are not typically used at crossings controlled by traffic signals, particularly in downtown areas. Crossings within highway-highway intersections in urban areas with train speeds of 60 km/h (35 mph) or less are typically controlled by traffic signals and Crossbuck signs are not used. Crossbuck signs are not appropriate for light rail transit crossings in downtown areas or at intersections controlled by traffic signals, since they are believed to be ineffective and create sign clutter. The FHWA proposes to revise the OPTION statement to allow the use of Crossbuck Assemblies (described in Section 8D.05) on semiexclusive alignments, to allow agencies the flexibility to use the Crossbuck sign if they choose to do so for certain situations.

The FHWA also proposes to revise the 3rd paragraph of the second STANDARD statement to clarify that the strip of reflective material that is required on Crossbuck Assembly supports shall be vertical and placed on the back of the support from the bottom of the Crossbuck sign to within 0.6 m (2 ft) above the ground. In conjunction with this change, the FHWA clarifies that on Crossbuck Assemblies where the YIELD or STOP sign is installed on a separate support, or is omitted in accordance with Section 8B.04, a vertical strip of retroreflective white material, not less than 50 mm (2 in) in width, shall be used on the front of the Crossbuck Assembly support from the bottom of the Crossbuck sign or Number of Tracks sign to within 0.6 m (2 ft) above the ground. The FHWA proposes these changes to clarify the types of reflective strips to be used, how they are to be measured, and when they are to be used.

498. The FHWA proposes to revise Section 10C.03 LOOK Sign to indicate that the LOOK sign may be mounted on a separate sign post (rather than to give the option of mounting it as a supplemental plaque on the Crossbuck sign) in the immediate vicinity of the highway-light rail grade crossing on the railroad right-of-way. The FHWA proposes this change because other proposed changes require other signs to be placed on the Crossbuck assembly and there would be insufficient space for the LOOK sign.

499. The FHWA proposes to change the title of Section 10C.04 to ''Use of STOP or YIELD Signs without Crossbuck Signs at Highway-Light Rail Transit Grade Crossings'' to reflect proposed changes to this section that clarify when it is appropriate to use only STOP or YIELD signs, without the Crossbuck Sign. As part of the proposed changes, FHWA proposes to delete the OPTION statement allowing a STOP or YIELD sign to be installed on the Crossbuck post, because this is proposed to be covered in Sections 10B.01 and 10C.02.

500. In existing Section 10C.08 STOP HERE WHEN FLASHING Sign (renumbered Section 10C.07 because the order of Sections 10C.07 and 10C.08 is proposed to be reversed to follow the same order as they are in Part 8), the FHWA proposes to add a new sign designated R8–10a. This proposed sign is similar in design and size to the existing R10–6a sign. The FHWA proposes this new sign in order to provide a 600 mm × 900 mm (24 in x 30 in) alternate to the R8–10 sign. The FHWA proposes to add both the proposed new R8–10a sign and the existing R10–6a signs to Table 8B–1.

501. In Section 10C.15 Highway-Rail Grade Crossing Advance Warning Signs, the FHWA proposes to add to the first STANDARD statement a requirement that a supplemental plaque describing the type of traffic control at the highway-light rail grade crossing shall be used with the Highway-Rail Grade Crossing Advance Warning sign (W10–

[205] ''San Francisco's Shared Lane Pavement Markings: Improving Bicycle Safety,'' Final Report, February 2004, prepared for the City of San Francisco Department of Traffic and Parking by Alta Planning and Design can be viewed at the following Internet Web site: *http://www.sfmta.com/cms/uploadedfiles/dpt/bike/Bike_Plan/Shared%20Lane%20Marking%20Full%20Report-052404.pdf.*

1). As part of this proposed change, the FHWA proposes to require the use of a No Signal (W10–10P) supplemental plaque in advance of a crossing that does not have active traffic control devices, and the use of a new Signal Ahead (W10–16P) plaque in advance of a crossing that does have active traffic control devices. The FHWA proposes a phase-in compliance period of 5 years for the use of these supplemental plaques at existing locations to minimize any impact on State or local highway agencies.

In addition, the FHWA proposes to add at the end of the 1st STANDARD that a Yield Ahead or a Stop Ahead Advance Warning Sign shall also be installed if criteria are met, along with information regarding the distance between signs in advance of a highway-light rail grade crossing, to emphasize existing requirements in Part 2.

The FHWA proposes these changes to improve safety by providing road users with additional information regarding traffic control devices at highway-rail grade crossings as recommended by recent research.[206]

502. In Figure 10C–4 Warning Signs and Light Rail Station Sign, the FHWA proposes to revise the symbol shown on the W10–7 sign to utilize the same symbol of a light rail vehicle as that used on the I–12 sign. The light rail vehicle symbol on the existing W10–7 sign was an inadvertent error that the FHWA proposes to correct so that the symbols will be consistent. The FHWA also proposes to add the No Signal (W10–10P) and Active Control (W10–16P) plaques to this figure.

503. The FHWA proposes to rewrite Section 10C.21 Emergency Notification Sign in its entirety. These proposed changes are very similar to those proposed in existing Section 8B.12 (new Section 8B.13) in item 465 above. The proposed text includes STANDARD statements that specify the minimum amount of information to be placed on Emergency Notification signs, sign placement, and the proposed sign color of a white legend and border on a blue background. The proposed new text includes an OPTION statement that allows similar information to be displayed on the enclosure for signal apparatus at crossings that are equipped with active traffic control devices. The proposed new text also includes a GUIDANCE statement with additional information on sign retroreflectivity, sign placement, and sign size. The FHWA proposes a phase-in compliance period of 10 years for existing signs in good condition to minimize any impact on State or local highway agencies. To illustrate the proposed change, FHWA would revise Figure 10C–4. The FHWA proposes these changes to simplify the requirements for these signs and to assure that the appropriate information is displayed on these valuable signs that provide information to roadway users in the event of an emergency or signal malfunction requiring notification to the railroad LRT agency.

504. The FHWA proposes to delete existing Section 10C.22 Illumination at Highway-Light Rail Transit Crossings, and place the information from this Section in a new Section numbered and titled, ''Section 10A.05 Illumination at Highway-Light Rail Grade Crossings.'' The remaining sections would be renumbered accordingly. See item 495 above.

505. In existing Section 10C.24 (new Section 10C.23) Stop Lines, the FHWA proposes to add a STANDARD statement requiring the use of stop lines on paved roadways at highway-light rail transit grade crossings that are equipped with active control devices. This requirement is currently implied by STANDARD language in Section 10C.22 and illustrated in Figure 10C–2. The FHWA proposes to add this specific requirement in Section 10C.24 for clarification and because the stop line provides road users with a clear indication of the point behind which they are required to stop when the traffic control devices are activated.

506. In Section 10D.01 Introduction, the FHWA proposes to change the OPTION statement to a STANDARD statement, which will require audible devices to the provided and operated in conjunction with flashing-light signals or traffic control signals where they are operated at a crossing that is used by pedestrians. The FHWA proposes this change because light rail transit vehicles are often nearly silent, and blind pedestrians cannot see flashing lights. Requiring the use of an audible warning device would assure that information about the approach of a light rail transit vehicle is available to persons with visual disabilities. The FHWA proposes a phase-in compliance period of 5 years for existing locations to minimize any impact on State or local highway agencies.

507. The FHWA proposes to add a new section after existing Section 10D.04 numbered and titled, ''Section 10D.05 Wayside Horn Systems.'' This new section contains OPTION, STANDARD, and GUIDANCE statements regarding the use of wayside horn systems to provide directional audible warning at highway-light rail grade crossings, pursuant to the Interim Approval for the Use of Wayside Horn Systems, issued August 2, 2004.[207] The FHWA proposes a phase-in compliance period of 5 years for existing locations to minimize any impact on State or local highway agencies. See item 472 above for additional information because this proposed new section is very similar to proposed new Section 8C.06. FHWA would renumber the remaining sections in this chapter accordingly.

508. In existing Section 10D.08 (new Section 10D.07) Use of Traffic Control Signals for Control of Light Rail Transit Vehicles at Grade Crossings, the FHWA proposes to change the first paragraph of the SUPPORT statement to a GUIDANCE statement, to recommend that the light rail transit signal indications shown in Figure 10D–1 be used to control light rail transit movements. The existing MUTCD indicates that the indications shown in the figure are only examples of indications that could be used, and there is no requirement or recommendation to use these particular indications. As a result, there is no uniformity in the light rail transit signal indications used around the country. The FHWA believes that such uniformity is needed and that the indications shown in Figure 10D–1 should be recommended for use. The FHWA proposes a phase-in compliance period of 15 years for existing locations to minimize any impact on State or local highway or transit agencies.

509. In Figures 10D–3 and 10D–4, the FHWA proposes to change the striping on the gate arms from diagonal to vertical to reflect the proposed striping change in Section 8D.04.

510. In existing Section 10D.08 (new Section 10D.09) Pedestrian and Bicycle Signals and Crossings, the FHWA proposes to add to the GUIDANCE statement that an audible device should be installed, in addition to a Crossbuck sign, at pedestrian and bicycle crossings where determined by an engineering study. The FHWA also proposes to add that if an engineering study shows that flashing-light signals with a Crossbuck sign and an audible device would not provide sufficient notice of an approaching light rail transit vehicle, the LOOK sign and/or pedestrian gates should be considered. The FHWA proposes these changes to provide

[206] National Cooperative Highway Research Report 470 titled ''Traffic Control Devices for Passive Railroad-Highway Grade Crossings,'' Transportation Research Board, 2002, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_470-a.pdf.*

[207] The Interim Approval can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/res-ia_waysidehorns.htm.*

consistency with proposed changes in Section 10D.01 in item 506 above.

511. The FHWA proposes to add a new section following existing Section 10D.08 (new Section 10D.09) numbered and titled, ''Section 10D.10 Highway-Light Rail Transit Grade Crossings(s) Within or In Close Proximity to Roundabouts, Traffic Circles, or Circular Intersections.'' This new section contains SUPPORT, STANDARD, and GUIDANCE statements that clarify the need for active traffic control devices where highway-rail grade crossings are within or in close proximity to roundabouts, traffic circles, or circular intersections. The FHWA proposes a phase-in compliance period of 5 years for existing locations to minimize any impact on State or local highway agencies.

512. The FHWA proposes to add a new Chapter titled, ''Chapter 10E Quiet Zone Treatments at Highway-Light Rail Transit Grade Crossings.'' The purpose of this new Chapter is to add language to support and directly refer to the Final Rule adopted by Federal Railroad Administration regarding quiet zones established in conjunction with restrictions on train horns at certain highway-rail grade crossings (49 CFR Part 222) [208] which may have applicability to certain highway-light rail transit grade crossings.

513. The FHWA proposes to add a new Chapter titled, ''Chapter 10F Pathway-Light Rail Transit Grade Crossings.'' The purpose of this new Chapter is to provide information for traffic control devices used at pathway-rail grade crossings. Shared-use paths and other similar facilities often cross light rail transit tracks and it is important that suitable traffic control devices be used to provide for safe and effective operation of such crossings. The FHWA proposes a phase-in compliance period of 5 years for existing signs in good condition to minimize any impact on State or local highway agencies.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined that this action would not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. Most of the proposed changes in the MUTCD would provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA believes that the uniform application of traffic control devices will greatly improve the traffic operations efficiency and roadway safety. The standards, guidance, and support are also used to create uniformity and to enhance safety and mobility at little additional expense to public agencies or the motoring public. In addition, these changes would not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Therefore, 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 these changes on small entities and has determined that this action would not have a significant economic impact on a substantial number of small entities. This proposed rule would add some alternative traffic control devices and only a very limited number of new or changed requirements. Most of the proposed changes are expanded guidance and clarification information.

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, March 22, 1995). The proposed revisions can be phased in by the States over specified time periods in order to minimize hardship. The proposed changes to traffic control devices that would require an expenditure of funds all would have future effective dates sufficiently long to allow normal maintenance funds to replace the devices at the end of the material life-cycle. To the extent the proposed revisions would require expenditures by the State and local governments on Federal-aid projects, they are reimbursable. This action would 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).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this rulemaking will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F. These proposed amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. The overriding safety benefits of the uniformity prescribed by the MUTCD are shared by all of the State and local governments, and changes made to this rule are directed at enhancing safety. To the extent that these proposed amendments override any existing State requirements regarding traffic control devices, they do so in the interest of national uniformity.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it 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 law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 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 apply to this program.

[208] The Federal Register Notice was published on December 18, 2003 (Volume 68, Number 243, Page 70586–70687) and can be viewed at the following Internet Web site: *http://www.fra.dot.gov/downloads/Safety/train_horn_rule/fed_reg_trainhorns_final.pdf.*

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 for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain collection information requirements for purposes of the PRA.

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)

The FHWA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA does not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that it would not have any effect on the quality of the environment.

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

23 CFR Part 634

Design standards, Highways and roads, Incorporation by reference, Workers, Traffic regulations.

23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

Issued on: December 14, 2007.

J. Richard Capka,

Federal Highway Administrator.

In consideration of the foregoing, under the authority 23 U.S.C. 315, the FHWA proposes to amend title 23, Code of Federal Regulations parts 634 and 655 as follows:

PART 634—[REMOVED AND RESERVED]

1. Part 634, as added at 71 FR 67800 (November 24, 2006), is removed and reserved.

PART 655–TRAFFIC OPERATIONS

2. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32; and, 49 CFR 1.48(b).

3. Revise paragraph (a) of § 655.601 to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), _____ [date to be inserted] Edition, FHWA, dated _____ [date to be inserted]. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. It is available for inspection and copying at the Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, as provided in 49 CFR part 7. The text is also available from the FHWA Office of Operations Web site at: *http//mutcd.fhwa.dot.gov*.

* * * * *

4. Amend § 655.603 by revising paragraph (a) to read as follows:

§ 655.603 Standards.

(a) *National MUTCD.* The MUTCD approved by the Federal Highway Administrator is the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel in accordance with 23 U.S.C. 109(d) and 402(a). For the purpose of MUTCD applicability, open to public travel includes toll roads and roads within shopping centers, parking lot areas, airports, sports arenas, and other similar business and/or recreation facilities that are privately owned but where the public is allowed to travel without access restrictions. Private gated properties where access is restricted and private highway-rail grade crossings are not included in this definition.

Appendix to Subpart F of Part 655—[Amended]

5. Amend Table 1 by changing the daytime chromaticity coordinates for retroreflective sign material for the color Purple as follows:

x	Y
Existing 0.300 Proposed 0.302.	Existing 0.064 Proposed 0.064.
Existing 0.320 Proposed 0.307.	Existing 0.200 Proposed 0.202.
Existing 0.550 Proposed 0.374.	Existing 0.300 Proposed 0.247.
Existing 0.600 Proposed 0.457.	Existing 0.202 Proposed 0.136.

6. Amend Table 2 by adding the nighttime chromaticity coordinates for retroreflective sign material for the color Purple as follows:

x	Y
0.300	0.064
0.307	0.150
0.480	0.245
0.530	0.170

7. Amend Table 3 by changing the daytime chromaticity coordinates for retroreflective sign material for the color Fluorescent Pink as follows:

x	Y
Existing 0.450 Proposed 0.600.	Existing 0.270 Proposed 0.340.
Existing 0.590 Proposed 0.450.	Existing 0.350 Proposed 0.332.
Existing 0.644 Proposed 0.430.	Existing 0.290 Proposed 0.275.
Existing 0.563 Proposed 0.536.	Existing 0.230 Proposed 0.230.
Existing———Proposed 0.644.	Existing———Proposed 0.290.

8. Amend Table 3 by adding after Fluorescent Pink the color Fluorescent Red and its daytime chromaticity coordinates for retroreflective sign material as follows:

x	Y
0.666	0.334
0.613	0.333
0.671	0.275
0.735	0.265

9. Amend Table 3A by adding after Fluorescent Pink the color Fluorescent Red and its daytime luminance coordinates for retroreflective sign material as follows:

Minimum	Maximum	Y_F
20	30	15

10. Amend Table 4 by adding after Fluorescent Green the color Fluorescent Red and its nighttime chromaticity coordinates for retroreflective sign material as follows:

x	Y
0.680	0.320
0.645	0.320
0.712	0.253
0.735	0.265

11. Amend Table 5 by adding after the color Blue the daytime chromaticity coordinates for Purple retroreflective pavement marking material as follows:

x	Y
0.300	0.064
0.309	0.260
0.362	0.295
0.475	0.144

12. Amend Table 5A by adding after the color Blue the daytime luminance factors for Purple retroreflective pavement marking material as follows:

Minimum	Maximum
5	15

13. Amend Table 6 by adding after the color Yellow the nighttime chromaticity coordinates for Purple retroreflective pavement marking material as follows:

x	Y
0.338	0.080
0.425	0.365
0.470	0.385
0.635	0.221

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Federal Register

Wednesday,
January 2, 2008

Part IV

Federal Election Commission

Privacy Act of 1974; Systems of Records; Notice

FEDERAL ELECTION COMMISSION

[Notice 2007–28]

Privacy Act of 1974; Systems of Records

AGENCY: Federal Election Commission.

ACTION: Notice of New and Revised Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Federal Election Commission (''the FEC'' or ''the Commission'' or ''the agency'') is publishing for comment new and revised systems of records that are maintained by the Commission. These systems have been proposed or revised as a result of a reevaluation of the manner in which the Commission maintains records. The Commission is deleting an obsolete system of records entitled FEC 4, Mailing Lists, and a duplicative system of records entitled FEC 5, Personnel Records. The four new proposed systems of records that have been added are entitled: FEC 13, Travel Records of Employees; FEC 14, Alternative Dispute Resolution Program; FEC 15, Freedom of Information Act System; and FEC 16, HSPD–12: Identity Management, Personnel Security, Physical and Logical Access Files. With the exception of FEC 12, all other systems have been revised to incorporate administrative changes that have taken place since the last complete publication of FEC systems of records on December 15, 1997.

DATES: Comments on the establishment of the new systems of records, as well as the revisions to existing records systems, must be received no later than February 1, 2008. The new systems of records and revisions will be effective February 11, 2008 unless the Commission receives comments that would result in a contrary determination.

ADDRESSES: Comments should be addressed in writing to Lawrence L. Calvert, Acting Co-Chief Privacy Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, by close of business on February 1, 2008. Comments may also be sent via electronic mail to *Privacy@fec.gov*.

SUPPLEMENTARY INFORMATION: The Privacy Act regulates the collection, maintenance, use and dissemination of information about individuals by Federal agencies. Its basic rule generally prohibits the disclosure of any individual's ''record,'' if contained in a ''system of records'' to a third party without the individual's consent. *See* 5 U.S.C. 552a(b). A ''system of records'' is any group of records in which records can be retrieved by the individual's name, or by a unique identifier assigned to the individual. *See* 5 U.S.C. 552a(a)(5).

There are a number of exceptions to the basic rule of nondisclosure without consent. Among them is an exception that permits nonconsensual disclosure for a ''routine use''—that is, a use compatible with the purposes for which the record was collected. 5 U.S.C. 552a(b)(3). Individuals are also, again with exceptions, guaranteed access to their records, and the right to request amendment of their records if they believe the records are inaccurate. *See generally* 5 U.S.C. 552a(d).

To facilitate these provisions, each agency must periodically review its systems of records and publish a notice in the **Federal Register** containing certain specified information about them. The FEC has undertaken and completed such a review. As a result of this review, the Commission determined that its Privacy Act notices required extensive modifications to more accurately describe the records systems currently maintained by the Commission. Rather than making numerous, piecemeal revisions, the Commission decided to draft and republish updated notices for all of its Privacy Act systems of records. By doing so, the Commission hopes to make these notices as clear and accessible to the public as possible.

The public is advised that the ''routine uses'' described herein are not the exclusive list of circumstances in which the Commission may share Privacy Act protected information with a third party without the consent of the individual to whom the records pertain. The ''routine use'' exception, 5 U.S.C. 552a(b)(3), is only one of twelve specific exceptions to the rule of nondisclosure contained within the Privacy Act itself—one of the most important of which is information for which disclosure is required pursuant to the Freedom of Information Act, 5 U.S.C. 552. See 5 U.S.C. 552a(b)(2). Another exception to the rule of nondisclosure is disclosure to either House of Congress, or a committee of the Congress when the inquiry concerns a matter within the committee's jurisdiction. See 5 U.S.C. 552a(b)(9). The proposed changes to the FEC's routine uses do not limit or alter these other exceptions. Conversely, the inclusion of a ''routine use'' in this notice does not necessarily mean that information will always be disclosed under all circumstances described as a ''routine use.'' For instance, records in FEC 3, Compliance Actions, may not be disclosed even pursuant to a routine use if disclosure is prohibited by 2 U.S.C. 437g(a)(12) (covering enforcement matters still open) or 2 U.S.C. 437g(a)(4) (covering information derived from conciliation attempts in any matter). Similarly, records in FEC 12, Inspector General Investigative Files, may not be disclosed if a matter is pending.

The proposed changes to the system entitled FEC 1, Advisory Opinions Process include: Revising the ''System name,'' adding data elements ''Security classification,'' ''Purpose(s),'' ''Disclosure to consumer reporting agencies,'' and ''Exemptions claimed for the system'' to comply with Office of Management and Budget (OMB) and **Federal Register** requirements; expanding the ''Categories of individuals covered by the system'' and ''Record source categories;'' adding routine uses Nos. 3 through 13; updating ''Storage,'' ''Retrievability,'' ''Safeguards,'' ''Retention and disposal,'' and ''System manager(s) and address;'' clarifying ''Notification procedure,'' ''Record access procedures,'' and ''Contesting record procedures;'' and technical revisions.

The proposed changes to the system entitled FEC 2, Audits and Investigations include: Adding data elements ''Security classification,'' ''Purpose(s),'' ''Disclosure to consumer reporting agencies,'' and ''Exemptions claimed for the system'' to comply with OMB and **Federal Register** requirements; expanding the ''Categories of individuals covered by the system'' and ''Record source categories;'' clarifying the ''Categories of records in the system;'' adding routine uses Nos. 3 through 9; updating ''Storage,'' ''Retrievability,'' ''Safeguards,'' and ''Retention and disposal;'' clarifying ''Notification procedure;'' ''Record access procedures,'' and ''Contesting record procedures;'' and technical revisions.

The proposed changes to the system entitled FEC 3, Compliance Actions include: Adding data elements ''Security classification,'' ''Purpose(s),'' and ''Disclosure to consumer reporting agencies;'' expanding the ''Categories of individuals covered by the system'' and ''Categories of records in the system;'' adding routine uses Nos. 3 through 15; updating ''Storage,'' ''Retrievability,'' ''Safeguards,'' ''Retention and disposal,'' and ''System manager(s) and address;'' clarifying ''Notification procedure,'' ''Record access procedures,'' and ''Contesting record procedures;'' and technical revisions.

The FEC is deleting the system entitled FEC 4, Mailing Lists, because the system of records is no longer searchable by name or other unique

identifier, and thus, does not require a System of Records Notice. The FEC is also deleting FEC 5, Personnel Records, because the system is covered by Office of Personnel Management government-wide systems of records (OPM/GOVT–1, 2, 3, 5 and 10).

The proposed changes to the system entitled FEC 6, Candidate Reports and Designations include: Adding data elements ''Security classification,'' ''Purpose(s),'' ''Disclosure to consumer reporting agencies,'' and ''Exemptions claimed for the system'' to comply with OMB and **Federal Register** requirements; expanding ''Categories of individuals covered by the system;'' clarifying ''Categories of records in the system;'' deleting routine uses; updating ''System location,'' ''Storage,'' ''Retrievability,'' ''Safeguards,'' ''Retention and disposal,'' and ''System manager(s) and address;'' clarifying ''Notification procedure,'' ''Record access procedures,'' ''Contesting record procedures;'' and ''Record source categories;'' and technical revisions.

The proposed changes to the system entitled FEC 7, Certification for Primary Matching Funds and General Elections Campaign Funds include: Adding data elements ''Security classification,'' ''Purpose(s),'' ''Disclosure to consumer reporting agencies,'' and ''Exemptions claimed for the system;'' updating ''System location;'' expanding ''Categories of individuals covered by the system;'' clarifying ''Categories of records in the system,'' adding routine uses Nos. 3 through 10; updating ''Storage,'' ''Retrievability,'' ''Safeguards,'' ''Retention and disposal,'' and ''System manager(s) and address;'' clarifying ''Notification procedure,'' ''Record access procedures,'' and ''Contesting record procedures;'' and technical revisions.

The proposed changes to the system entitled FEC 8, Payroll Records include: Adding data elements ''Security classification,'' ''Categories of individuals covered by the system,'' ''Purpose(s),'' ''Disclosure to consumer reporting agencies;'' and ''Exemptions claimed for the system'' to comply with OMB and **Federal Register** requirements; updating ''System location;'' expanding ''Categories of records in the system;'' re-numbering and adding routine uses Nos. 1 through 33; updating ''Storage;'' ''Retrievability,'' ''Safeguards,'' and ''System manager(s) and address;'' clarifying ''Notification procedure,'' ''Record access procedures'' and ''Contesting record procedures;'' and technical revisions.

The proposed changes to the system entitled FEC 9, Litigation Actions include: Adding data elements ''Security classification,'' ''Purpose(s),'' ''Disclosure to consumer reporting agencies,'' and ''Exemptions claimed for the system'' to comply with **Federal Register** requirements; expanding the ''Categories of individuals covered by the system'' and ''Categories of records in the system;'' adding routine uses Nos. 3–13; updating ''Storage,'' ''Retrievability,'' ''Safeguards,'' ''Retention and disposal,'' and ''System manager(s) and address;'' clarifying the ''Notification procedure,'' ''Record access procedures,'' and ''Contesting record procedures;'' and technical revisions.

The proposed changes to the system entitled FEC 10, Letter File. Public Communications include: Adding data elements ''Security classification,'' ''Purpose(s),'' ''Disclosure to consumer reporting agencies,'' ''Safeguards,'' and ''Exemptions claimed for the system'' to comply with OMB and **Federal Register** requirements; updating ''System location;'' expanding the ''Categories of individuals covered by the system;'' clarifying the ''Categories of records in the system,'' adding routine uses Nos. 3 through 12; updating ''Retrievability,'' ''Retention and disposal,'' and ''System manager(s) and address;'' clarifying ''Notification procedure;'' ''Record access procedures,'' ''Contesting record procedures,'' and ''Record source categories;'' and technical revisions.

The proposed changes to the system entitled FEC 11, Contributor Name Index System include: Adding data elements ''Security classification,'' ''Purpose(s),'' ''Disclosure to consumer reporting agencies,'' and ''Exemptions claimed for the system'' to comply with OMB and **Federal Register** requirements; updating ''System location;'' expanding ''Categories of individuals covered by the system;'' clarifying ''Categories of records in the system;'' deleting routine uses; updating ''Storage,'' ''Retrievability,'' ''Safeguards,'' ''Retention and disposal,'' and ''System manager(s) and address;'' clarifying ''Notification procedure,'' ''Record access procedures,'' and ''Contesting record procedures,'' expanding ''Record source categories;'' and technical revisions.

The Commission recently published a proposed notice of revised system of records covering the system entitled FEC 12, Inspector General Investigative Files. 72 FR 3141 (January 24, 2007). Thus, changes to FEC 12 include only technical revisions.

The FEC proposes to establish the system of records entitled FEC 13, Travel Records of Employees. FEC 13 would cover travel records of FEC employees.

The FEC proposes to establish the system of records entitled FEC 14, Alternative Dispute Resolution Program. FEC 14 would cover documents generated by the FEC's Alternative Dispute Resolution (ADR) program. The ADR program was established to provide parties in enforcement actions with an alternative method for resolving complaints filed against them or for addressing issues identified in the course of an FEC audit. The resolution process is designed to promote compliance with the Federal Election Campaign Act, as amended and Commission regulations and to reduce the cost of processing complaints by encouraging settlements outside the FEC's normal enforcement track.

The FEC proposes to establish the System of Records entitled FEC 15, FEC Freedom of Information Act System. The Freedom of Information Act (FOIA), 5 U.S.C. 552, generally provides any person with the right to obtain access to agency records unless the information is protected from disclosure by any of the nine exemptions or special law enforcement exclusions. FEC 15 would cover records of FEC compliance with the Freedom of Information Act (FOIA), such as FOIA requests, responses, and appeals.

The FEC proposes to establish FEC 16, HSPD–12: Identity Management, Personal Security, Physical and Logical Access Files. Homeland Security Presidential Directive 12 (HSPD–12) requires federal agencies to use a common identification credential for both logical and physical access to federally controlled facilities and information systems. The FEC plans to enter into a shared services support agreement with an approved shared service provider to automate the process of issuing credentials to all agency employees, contractors, volunteers, and other individuals who require routine, long-term access to agency facilities, systems, and networks. Credentials are issued based on sound criteria to verify an individual's identity, that are strongly resistant to fraud, tampering, counterfeiting, and terrorist exploitation, and that provide for rapid, electronic authentication of personal identity by a provider whose reliability has been established through an official accreditation process.

As required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, and OMB Circular A–130, the FEC has submitted a report describing the new and altered systems of records covered by this notice to the Office of

Management and Budget and to Congress.

Dated: December 19, 2007.

Robert D. Lenhard,

Chairman, Federal Election Commission.

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FEC 1

SYSTEM NAME:

Advisory Opinions Process.

SECURITY CLASSIFICATION:

Sensitive but unclassified; some records are public.

SYSTEM LOCATION:

Federal Election Commission, Office of General Counsel, Policy Division, 999 E Street, NW., Washington, DC 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted correspondence to the FEC requesting an advisory opinion under the Federal Election Campaign Act and FEC regulations; individuals who have submitted comments regarding advisory opinion drafts; current and former FEC staff assigned to handle requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in this system include paper and electronic correspondence, staff notes, Commissioners' comments, and advisory opinion drafts. May include the name, address, telephone number, e-mail address, employment information, political activity, and financial records of the correspondents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 U.S.C. 437d(a)(7) and 437f.

PURPOSE(S):

The Federal Election Campaign Act of 1971, as amended, requires that the FEC render advisory opinions to persons with regard to subjects arising under the Act. *See* 2 U.S.C. 437f. The FEC gathers or creates the records in this system in the course of accepting and responding to requests for such advisory opinions. Commissioners and staff use this system to respond to requests for advisory opinions, and the documents are maintained for use as a reference in subsequent requests for advisory opinions. Advisory opinions issued before 2001 are available to the public online at Commission's Public Records Office. Advisory opinions, requests, draft opinions, amendments considered by the Commission in public session, public comments, and similar documents issued after 2001 are available to the public at e Public Records Office.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

These records and information contained in the records may be disclosed as follows:

1. To the Department of Justice when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed, after careful review, by the Federal Election Commission to be relevant and necessary to the litigation, provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

2. To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency, or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, after careful review, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

3. To the news media or the general public, factual information the disclosure of which would be in the public interest and which would not constitute an unwarranted invasion of personal privacy.

4. To appropriate Federal, foreign, State, local, tribal, or other public authorities responsible for enforcing, investigating or prosecuting civil or criminal violations of law or as necessary to facilitate parallel investigations or to assist the other agency with the investigation or prosecution of a matter within its jurisdiction.

5. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, to enable them to protect the safety of Commission employees and visitors and the security of the Commission's workplace; and to assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of Commission facilities.

6. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the written request of the individual about whom the record is maintained (e.g., a constituent request). Disclosure will not be made until the congressional office has furnished appropriate documentation of the individual's request, such as a copy of the individual's written request.

7. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2903 and 2904.

8. To contractors (including employees of contractors), grantees, experts, or volunteers who have been engaged to assist the agency in the performance of a contract, service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity for the agency. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

9. To an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person

properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee or former employee, but only to the extent that information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

10. To the Office of Personnel Management for matters concerned with oversight activities (necessary for the Office of Personnel Management to carry out its legally-authorized Government-wide personnel management programs and functions) and in their role as an investigation agency.

11. To officials of labor organizations when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

12. To agencies, offices, or establishments of the executive, legislative, or judicial branch of the Federal or State government after receipt of request and where the records or information is relevant and necessary to a decision on an employee's disciplinary or other administrative action (excluding a decision on hiring). The agency will take reasonable steps to ensure that the records are timely, relevant, accurate, and complete enough to assure fairness to the employee affected by the disciplinary or administrative action.

13. To appropriate agencies, entities, and persons when (1) the agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records; microfilm; electronic format on agency computer networks.

RETRIEVABILITY:

Microfilm and paper records are indexed and retrievable by name of requester, date of opinion, request number, subject, citation, or phrase, and, as applicable, by microfilm roll and frame number.

Records maintained in electronic form on agency computer networks may be retrieved by agency personnel using Case Management System software, the Office of General Counsel (OGC) Internal Index, or the Commission's Web site and are retrievable by name of requestor, request number, date of opinion, subject, citation, phrase, and name of current or former staff who handled the request.

The Commission's published advisory opinions are available for public review in the Commission's Public Records Office and on the FEC's Internet web page and are indexed by request number and are full-text searchable. All advisory opinions and many requests and draft opinions are also available on microfilm. Members of the public may retrieve any advisory opinion online. For opinions issued after 2001, members of the public may view in the Public Records Office, the requests, draft opinions, and amendments considered by the Commission in public session, public comments, and similar documents. These documents are also available on the Commission's Web site.

SAFEGUARDS:

Records in this system of records are under the custody of designated employees of the Commission. Access to the records is limited to employees requiring access to the information contained therein to further the agency's mission. Electronic records that are not available on the Commission's Web site are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include the application of appropriate access control mechanisms to ensure the confidentiality, integrity, and availability of those records and that they are only accessed by those with a need to know and dictated by their official duties.

RETENTION AND DISPOSAL:

Paper copies are retained for at least four years from date of receipt and subject to disposal thereafter. Electronic and microfilm copies are available indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Associate General Counsel for Policy, Office of General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202/694–1650).

NOTIFICATION PROCEDURE:

A request for notification of the existence of records may be made in person or in writing to the Associate General Counsel for Policy, Office of General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

An individual interested in gaining access to a record pertaining to him or her may make a request in person or in writing to the Associate General Counsel for Policy, Office of General Counsel, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

CONTESTING RECORD PROCEDURES:

Individuals interested in contesting the information contained in their records or the denial of access to such information should notify the Associate General Counsel for Policy, Office of General Counsel, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's regulations for contesting initial denials for access to or amendment of records, 11 CFR parts 1.7–1.9, 41 FR 43064 (1976).

RECORD SOURCE CATEGORIES:

Information is provided by individual requesters of advisory opinions, persons submitting comments to the FEC with regard to the request, and FEC staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FEC 2

SYSTEM NAME:

Audits and Investigations.

SECURITY CLASSIFICATION:

Sensitive but unclassified; some records are public.

SYSTEM LOCATION:

Federal Election Commission, Audit Division, 999 E Street, NW., Washington, DC 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Candidates required to file statements and reports under the Federal Election Campaign Act; treasurers or other representatives of political committees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents related to audits and investigations. The records contained in this system may include the name, address, telephone number, and financial data of the subjects of audits and investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 U.S.C. 437d(a)(9), 437g(a)(2), (5) and 438(a)(8), (9); 26 U.S.C. 9007, 9038.

PURPOSE(S):

The information contained in the records maintained in this system is used to verify compliance with the Federal Election Campaign Act and to verify compliance with, and eligibility for, funds pursuant to the Presidential Campaign Matching Fund Act and the Presidential Primary Matching Payment Account Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information contained in the records may be disclosed as follows:

1. To disclose them to the Department of Justice when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed, after careful review, by the Federal Election Commission to be relevant and necessary to the litigation, provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

2. To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency, or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, after careful review, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

3. To the general public but only to the extent the information is contained in, or relates to, a proposed Final Audit Report considered by the Commission in public session or is contained in an approved Final Audit Report.

4. To appropriate Federal, foreign, State, local, tribal, or other public authorities responsible for enforcing, investigating or prosecuting civil or criminal violations of law or as necessary to facilitate parallel investigations or to assist the other agency with the investigation or prosecution of a matter within its jurisdiction.

5. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, to enable them to protect the safety of Commission employees and visitors and the security of the Commission's workplace; and to assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of Commission facilities.

6. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

7. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2903 and 2904.

8. To contractors (including employees of contractors), grantees, experts, or volunteers who have been engaged to assist the agency in the performance of a contract, service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity for the agency. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

9. To appropriate agencies, entities, and persons when (1) the agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records; CD-Rom storage; and electronic format on agency networks.

RETRIEVABILITY:

Indexed by name of auditee. The public may retrieve approved Final Audit Reports from a page on the Commission's Web site.

SAFEGUARDS:

Paper records are retained in locked safes in limited access locations. Access is limited to FEC staff on a restricted basis and to appropriate law enforcement agencies as directed by the Commission. Auditors in the field keep their audit documents under personal supervision or in locked cases. CD-ROMs are kept in locked file cabinets. All electronic records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include the application of appropriate access control mechanisms to ensure the confidentiality, integrity, and availability of those records and that they are only accessed by those with a need to know and dictated by their official duties.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with FEC records control schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Staff Director for Audit, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202/694–1200).

NOTIFICATION PROCEDURE:

A request for notification of the existence of records may be made in person or in writing to the Assistant Staff Director for Audit, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

An individual interested in gaining access to a record pertaining to him or her may make a request in person or in writing to the Assistant Staff Director for Audit, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

CONTESTING RECORD PROCEDURES:

Individuals interested in contesting the information contained in their records or the denial of access to such information should notify the Assistant Staff Director for Audit, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's regulations for contesting initial denials for access to or amendment of records, 11 CFR parts 1.7–1.9, 41 FR 43064 (1976).

RECORD SOURCE CATEGORIES:

Information is provided by the candidate's authorized campaign committee, political committees, and political action committees. Information also may be obtained by subpoena from vendors and other individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

With respect to open audits, this system is exempt pursuant to the provisions of 5 U.S.C 552a(k)(2). See 11 CFR 1.14. When the audit is closed, copies of final reports are available on the public record.

FEC 3

SYSTEM NAME:

Compliance Actions.

SECURITY CLASSIFICATION:

Sensitive but unclassified; some material is public.

SYSTEM LOCATION:

Federal Election Commission, Office of General Counsel, Complaints Examinations & Legal Administration Division, 999 E Street, NW., Washington, DC 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed complaints under the Federal Election Campaign Act (2 U.S.C. 431 *et seq.*) (complainants); individuals who are the subjects of complaints (respondents), including treasurers of respondent political committees, and counsel; candidates filing late or inaccurate reports, or no reports; witnesses and other individuals providing information with respect to a compliance matter; and current and former FEC personnel, including RAD analysts, auditors, attorneys and investigators.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaints, sua-sponte submissions, referrals, and responses thereto; documents generated in the course of internally-generated investigations of reports on file at the Commission; documents generated and received in the course of investigations of complaints and referrals, including General Counsel's Reports, briefs, deposition and transcripts, interrogatories and responses thereto, hearing records, Subpoenas and orders, documents received from other government agencies, other documentary evidence, documents in the course of conciliation, and memoranda and notes created by agency personnel with respect to investigations. May include the name, address, Social Security Number, telephone number, e-mail address, employment information, education, political activity records, tax records, travel records, and financial records of the subjects of compliance actions or other individuals covered by the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 U.S.C. 437g(a)(1), (2), (4) and (5); 438(a)(7) and 438(b); 26 U.S.C. 9006 and 9038.

PURPOSE(S):

The Federal Election Campaign Act of 1971, as amended, requires that the FEC enforce the provisions of the Act. The FEC gathers or creates the records in this system in the course of investigating and acting as civil prosecutor for alleged violations of the Act. While any compliance action is active, these records are maintained as the agency's working or investigative file for the Matter Under Review (MUR). Based upon information contained in the file, recommendations are made to the Commission as to the disposition of a case, and the Commission acts upon those recommendations. The Associate General Counsel assigns compliance actions to an attorney and/or to appropriate staff for investigation. Administrative action pursuant to 2 U.S.C. 437g and civil litigation are handled by the General Counsel's Office. Upon the closing of the compliance matter, certain documents are placed on the public record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information contained in the records may be disclosed as follows:

1. To the Department of Justice when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed, after careful review, by the Federal Election Commission to be relevant and necessary to the litigation, provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

2. To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency, or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, after careful review,

use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

3. To the Attorney General of the United States to refer evidence of knowing and willful violations of the law.

4. Upon the closing of the compliance matter, to place certain documents on the public record of the agency, pursuant to guidance promulgated by the Commission. Before the documents are released to the public, Commission personnel review and redact information that is not disclosable under the Freedom of Information Act, such as personal information (i.e., home addresses, home telephone numbers, and bank account numbers).

5. To appropriate Federal, foreign, State, local, tribal, or other public authorities responsible for enforcing, investigating or prosecuting civil or criminal violations of law for purposes of reporting the information to those authorities pursuant to 2 U.S.C. 437d(a)(9) or as otherwise necessary to facilitate parallel investigations or to assist the other agency with the investigation or prosecution of a matter within its jurisdiction.

6. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, to enable them to protect the safety of Commission employees and visitors and the security of the Commission's workplace; and to assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of Commission facilities.

7. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

8. To a Federal, State, local, foreign, tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

9. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2903 and 2904.

10. To contractors (including employees of contractors), grantees, experts, or volunteers who have been engaged to assist the agency in the performance of a contract, service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity for the agency. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

11. To an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee or former employee, but only to the extent that information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

12. To the Office of Personnel Management for matters concerned with oversight activities (necessary for the Office of Personnel Management to carry out its legally-authorized Government-wide personnel management programs and functions) and in their role as an investigation agency.

13. To officials of labor organizations when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

14. To agencies, offices, or establishments of the executive, legislative, or judicial branch of the Federal or State government after receipt of request and where the records or information is relevant and necessary to a decision on an employee's disciplinary or other administrative action (excluding a decision on hiring). The agency will take reasonable steps to ensure that the records are timely, relevant, accurate, and complete enough to assure fairness to the employee affected by the disciplinary or administrative action.

15. To appropriate agencies, entities, and persons when (1) the agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), records can be disclosed to consumer reporting agencies as they are defined in the Fair Credit Reporting Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic form on agency computer networks, on

RETRIEVABILITY:

Microfilm and paper records are indexed and retrievable by name of complainant or respondent, by compliance action number, or by microfilm roll and frame number, as appropriate.

Electronic records are maintained on agency computer networks and may be retrieved using software systems that support the agency's compliance mission. The Case Management System (CMS), Concordance, and Docs open databases are available only to agency personnel. When a compliance matter has been closed, certain records are placed on the agency's public record, and may be retrieved by the public through the agency's Web site using the Enforcement Query System.

SAFEGUARDS:

Records in this system of records are under the custody of designated employees of the Commission. Access to the records is limited to employees requiring access to the information contained therein to further the agency's compliance mission. Paper and

microfilm records in this system are kept in locked filing cabinets in limited access areas under personal surveillance during working hours, and in locked filing cabinets in locked rooms at other times. All electronic records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include the application of appropriate access control mechanisms to ensure the confidentiality, integrity, and availability of those records and that they are only accessed by those with a need to know and dictated by their official duties. Prior to making documents publicly available through the Electronic Query System, the Office of General Counsel thoroughly reviews each record to remove information deemed to be exempt under the Freedom of Information Act.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with FEC records control schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Special Counsel for Complaints Examinations & Legal Administration, Office of General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202/694–1650).

NOTIFICATION PROCEDURE:

A request for notification of the existence of records may be made in person or in writing to the Special Counsel for Complaints Examinations & Legal Administration, Office of General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

An individual interested in gaining access to a record pertaining to him or her may make a request in person or in writing to the Special Counsel for Complaints Examinations & Legal Administration, Office of General Counsel, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

CONTESTING RECORD PROCEDURES:

Individuals interested in contesting the information contained in their records or the denial of access to such information should notify the Special Counsel for Complaints Examinations & Legal Administration, Office of General Counsel, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's regulations for contesting initial denials for access to or amendment of records, 11 CFR parts 1.7–1.9, 41 FR 43064 (1976).

RECORD SOURCE CATEGORIES:

Information is obtained from a variety of sources, including but not limited to complainants, respondents, third parties who have been requested, or subpoenaed, to produce relevant information, referrals, other Federal, State, or local authorities, financial institutions, and the Federal Election Commission. Information is also obtained from individuals covered by the system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

With respect to open investigations, the system is exempt pursuant to 5 U.S.C. 552a(k)(2). See 11 CFR part 1.14.

FEC 6

SYSTEM NAME:

Candidate Reports and Designations.

SECURITY CLASSIFICATION:

Public.

SYSTEM LOCATION:

Federal Election Commission, Public Disclosure Division, 999 E Street, NW., Washington, DC 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Candidates for Federal office required to file reports of contributions and expenditures; sources of receipts and recipients of disbursements, including contributors and vendors; and treasurers of Candidate Committees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports and Statements of candidates; reports by delegates and other persons making contributions or independent expenditures; and designations on behalf of a Federal candidate but not through a political committee, candidate, or authorized committee or agent of a candidate. May include the name, address, telephone number, e-mail address, employment information, political affiliation and financial records of the candidate or treasurer. May include the name, address, occupation, name of employer, and amounts of contribution of any person who contributes more than $200 in a calendar year to a Federal political committee (or $200 in an election cycle, in the case of contributors to the authorized committee of candidates for Federal office).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 U.S.C. 432(e), 434, 437b(a)(1), and 438(a)(4).

PURPOSE(S):

The information contained in the records maintained in this system is used to inform the public of the amounts raised and spent by authorized committees of candidates for Federal office and other Federal political committees as well as the sources from which the amounts are raised and the recipients of the amounts spent; also, to verify compliance with the Federal Election Campaign Act. The Commission is required to make this information public pursuant to 2 U.S.C. 438(a)(4).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None involving nonpublic information. All records in this system are public pursuant to 2 U.S.C. 438(a)(4).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, microfilm, electronic format on agency computer networks, and on the Internet at the FEC's web page.

RETRIEVABILITY:

Paper and microfilm records are retrievable by candidate name, candidate identification (ID) number, committee name, committee ID number, or by the State in which candidate seeks election; electronic records are retrievable by candidate name, candidate ID number, committee name, committee ID number, or by the State or district in which the candidate seeks election.

All electronic searches may be conducted by any member of the public using the Commission's Web site.

SAFEGUARDS:

Original copies of records in this system are located in locked filing cabinets or are maintained on password protected agency computer networks. All electronic records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards.

RETENTION AND DISPOSAL:

Reports are preserved for a 10-year period except that reports relating solely to candidates for the House of Representative are preserved for 5 years from the date of receipt. Microfilm and electronic records are maintained and disposed of in accordance with FEC records control schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Staff Director for Disclosure, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202/694–1120).

NOTIFICATION PROCEDURE:

A request for notification of the existence of records may be made in person or in writing to the Assistant Staff Director for Disclosure, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

An individual interested in gaining access to a record pertaining to him or her may make a request in person or in writing to the Assistant Staff Director for Disclosure, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

CONTESTING RECORD PROCEDURES:

Individuals interested in contesting the information contained in their records or the denial of access to such information should notify the Assistant Staff Director for Disclosure, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's regulations for contesting initial denials for access to or amendment of records, 11 CFR parts 1.7–1.9, 41 FR 43064 (1976).

RECORD SOURCE CATEGORIES:

Candidate committee disclosure reports and designations filed with the FEC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FEC 7

SYSTEM NAME:

Certification for primary matching funds and general election campaign funds.

SECURITY CLASSIFICATION:

Sensitive but unclassified; some records are public.

SYSTEM LOCATION:

Federal Election Commission, Audit Division, 999 E Street, NW., Washington, DC 20463.

CATEGORIES OF RECORDS IN THE SYSTEM:

Candidates for nomination or election to the Office of President of the United States and contributors whose contributions are matched under the Matching Payment Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Certification forms and supporting data requesting matching funds or election funds including the candidate agreement. May include the name, address, telephone number, e-mail address, employment information, political activity or affiliations and financial records of the candidates. May include the names, addresses, occupations, names of employers, and dates and amounts of contributions of contributors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C. 9003, 9006; 26 U.S.C. 9033, 9036, 9037.

PURPOSE(S):

To assist the Commission in facilitating the primary matching funds and general election campaign funds programs for Presidential primary candidates and nominees. Presidential candidates who seek matching funds must submit information about matchable contributions to the FEC for review. These files are available to the public and are placed on the FEC's Internet site. Before receiving matching funds, candidates must also provide a letter of agreement (candidate agreement) stating they accept the conditions for receiving matching grants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information contained in the records may be disclosed as follows:

1. To the Department of Justice when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed, after careful review, by the Federal Election Commission to be relevant and necessary to the litigation, provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

2. To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency, or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, after careful review, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

3. To the news media or the general public, factual information the disclosure of which would be in the public interest and which would not constitute an unwarranted invasion of personal privacy. However, under 2 U.S.C. 438a(4), any information copied from financial disclosure reports shall not be sold or utilized by any person for the purposes of soliciting contributions or for any commercial purpose.

4. To appropriate Federal, foreign, State, local, tribal, or other public authorities responsible for enforcing, investigating or prosecuting civil or criminal violations of law or as necessary to facilitate parallel investigations or to assist the other agency with the investigation or prosecution of a matter within its jurisdiction.

5. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, to enable them to protect the safety of Commission employees and visitors and the security of the Commission's workplace; and to assist investigations or prosecutions with respect to activities that affect such safety and security or

activities that disrupt the operation of Commission facilities.

6. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the written request of the individual about whom the record is maintained (e.g., a constituent request). Disclosure will not be made until the congressional office has furnished appropriate documentation of the individual's request, such as a copy of the individual's written request.

7. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2903 and 2904.

8. To contractors (including employees of contractors), grantees, experts, or volunteers who have been engaged to assist the agency in the performance of a contract, service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity for the agency. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

9. To the Department of Treasury in connection with issuing matching funds to qualified recipients.

10. To appropriate agencies, entities, and persons when (1) the agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), records can be disclosed to consumer reporting agencies as they are defined in the Fair Credit Reporting Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records; CD-Rom storage; electronic format on agency computer networks.

RETRIEVABILITY:

Indexed and retrievable by name of candidate, committee ID, and candidate ID. Matching funds submissions are retrievable by members of the public on a page on the agency's public Web site.

SAFEGUARDS:

Paper records and CD-ROMs are kept in locked file cabinets in limited access areas under personal surveillance during working hours and in locked rooms at other times. All electronic records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include the application of appropriate access control mechanisms to ensure the confidentiality, integrity, and availability of those records and that they are only accessed by those with a need to know and dictated by their official duties.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with FEC records control schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Staff Director for Audit, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202/694–3440).

NOTIFICATION PROCEDURE:

A request for notification of the existence of records may be made in person or in writing to the Assistant Staff Director for Audit, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

An individual interested in gaining access to a record pertaining to him or her may make a request in person or in writing to the Assistant Staff Director for Audit, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

CONTESTING RECORD PROCEDURES:

Individuals interested in contesting the information contained in their records or the denial of access to such information should notify the Assistant Staff Director for Audit, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's regulations for contesting initial denials for access to or amendment of records, 11 CFR parts 1.7–1.9, 41 FR 43064 (1976).

RECORD SOURCE CATEGORIES:

Certification reports and candidate agreements filed with the Commission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FEC 8

SYSTEM NAME:

Payroll records.

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATION:

Federal Election Commission, Finance Division, 999 E Street, NW., Washington, DC 20463 and on a computer system located in the Department of Agriculture's National Finance Center, New Orleans, Louisiana.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All FEC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Varied payroll records, including, among other documents, time and attendance cards; payment vouchers; comprehensive listing of employees; health and other benefit records; requests for deductions; tax forms; W–2 forms; headcount data; overtime requests; leave data; and retirement records. May include names, addresses, telephone numbers, marital status, date of birth, e-mail addresses, employment and education history, health and financial information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C., generally. Also, 2 U.S.C. 437c(f).

PURPOSE(S):

Records in this system are used by the Commission to maintain adequate payroll information on Commission employees, to measure employee performance, record time and attendance, and file reports with appropriate authorities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information contained in the records may be disclosed as follows:

1. To the Department of Justice when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed, after careful review, by the Federal Election Commission to be relevant and necessary to the litigation, provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

2. To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency, or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, after careful review, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

3. To appropriate Federal, foreign, State, local, tribal, or other public authorities responsible for enforcing, investigating or prosecuting civil or criminal violations of law or as necessary to facilitate parallel investigations or to assist the other agency with the investigation or prosecution of a matter within its jurisdiction.

4. To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

5. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, to enable them to protect the safety of Commission employees and visitors and the security of the Commission's workplace; and to assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of Commission facilities.

6. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the written request of the individual about whom the record is maintained (e.g., a constituent request). Disclosure will not be made until the congressional office has furnished appropriate documentation of the individual's request, such as a copy of the individual's written request.

7. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2903 and 2904.

8. To contractors (including employees of contractors), grantees, experts, or volunteers who have been engaged to assist the agency in the performance of a contract, service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity for the agency.

Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

9. To an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee or former employee, but only to the extent that information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

10. To the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

11. To officials of labor organizations when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

12. To agencies, offices, or establishments of the executive, legislative, or judicial branch of the Federal or State government after receipt of request and where the records or information is relevant and necessary to a decision on an employee's disciplinary or other administrative action (excluding a decision on hiring). The agency will take reasonable steps to ensure that the records are timely, relevant, accurate, and complete enough to assure fairness to the employee affected by the disciplinary or administrative action.

13. To debt collection contractors to collect debts owed to the Government, as authorized under the Debt Collection Act of 1982, 31 U.S.C. 3718, and subject to the Privacy Act safeguards.

14. To the Office of Child Support Enforcement Administration for Children and Families, Department of Health and Human Services Federal Parent Locator Service (FPLS) and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action.

15. To the Office of Child Support Enforcement for release to the Social Security Administration for verifying Social Security Numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

16. To the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

17. To officers and employees of a Federal agency for purposes of an audit.

18. To the General Accounting Office for audits; to the Internal Revenue Service for investigation; and to individual representatives, pursuant to a power of attorney.

19. To audit firms or other contractors conducting audits or studies of FEC's financial or computer systems or processes in accordance with the Accountability of Tax Dollars Act of

2002, other laws, or special studies requested by management.

20. To a State and city, or other local jurisdiction that is authorized to tax the employee's compensation, a copy of an employee's Department of Treasury form W–2, wage and tax statement. The record will be provided in accordance with a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury, pursuant to 5 U.S.C. 5516, 5517, or 5520, or, in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Accounting Officer, Federal Election Commission, Washington, DC 20463. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

a. Pursuant to a withholding agreement between a city and the Department of Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished to the city in response to a written request from an appropriate city official to the Accounting Officer.

b. In the absence of a withholding agreement, the Social Security Number will be furnished only to a taxing jurisdiction that has furnished this agency with evidence of its independent authority to compel disclosure of the Social Security Number, in accordance with Section 7 of the Privacy Act.

21. To the Department of Agriculture, National Finance Center, to credit Thrift Savings Plan deductions and loan payments to employee accounts.

22. To the Department of Treasury to issue checks, make payments, make electronic funds transfers, and issue U.S. Savings Bonds.

23. To the Department of Labor in connection with a claim filed by an employee for compensation due to a job connected injury or illness.

24. To the Internal Revenue Service; Social Security Administration; and State and local tax authorities in connection with the withholding of employment taxes.

25. To the Combined Federal Campaign in connection with payroll deductions for charitable contributions.

26. To State Unemployment Offices in connection with a claim filed by former employees for unemployment benefits.

27. To the Office of Personnel Management and to Health Benefit carriers in connection with enrollment and payroll deductions.

28. To the Office of Personnel Management in connection with employee retirement and life insurance deductions.

29. To the Office of Management and Budget and Department of the Treasury to provide required reports on financial management responsibilities.

30. To provide information as necessary to other Federal, State, local or foreign agencies conducting computer matching programs to help eliminate fraud and abuse and to detect unauthorized overpayments made to individuals. When disclosures are made as part of computer matching programs, FEC will comply with the Computer Matching and Privacy Protection Act of 1988.

31. To the Internal Revenue Service in connection with withholdings for tax levies.

32. To the General Services Administration, which has been engaged to assist the agency in processing and administering certain functions related to this system of records.

33. To appropriate agencies, entities, and persons when (1) the agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic format on agency computer networks. Primary computer files stored on server hard-drives with tape backup for all records located at 999 E Street, NW., Washington, DC and at the National Finance Center in New Orleans, Louisiana.

RETRIEVABILITY:

Records are accessible via last name or Social Security Number. Employees have online access to portions of their own files via their last name and/or Social Security Number and/or PIN through the National Finance Center Web site.

SAFEGUARDS:

Paper Records are kept in locked file cabinets located in a cipher-locked room. All electronic records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include the application of appropriate access control mechanisms to ensure the confidentiality, integrity, and availability of those records and that they are only accessed by those with a need to know and dictated by their official duties.

RETENTION AND DISPOSAL:

Disposition of records shall be in accordance with the HB GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER(S) AND ADDRESS:

Accounting Officer, Office of the Chief Financial Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202/694–1230).

NOTIFICATION PROCEDURE:

A request for notification of the existence of records may be made in person or in writing to the Accounting Officer, Office of the Chief Financial Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

An individual interested in gaining access to a record pertaining to him or her may make a request in person or in writing to the Accounting Officer, Office of the Chief Financial Officer, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

CONTESTING RECORD PROCEDURES:

Individuals interested in contesting the information contained in their records or the denial of access to such information should notify the Accounting Officer, Office of the Chief Financial Officer, Federal Election Commission at the following address:

999 E Street, NW., Washington DC, 20463. For additional information, refer to the Commission's regulations for contesting initial denials for access to or amendment of records, 11 CFR parts 1.7–1.9, 41 FR 43064 (1976).

RECORD SOURCE CATEGORIES:

The subject individual; the Federal Election Commission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FEC 9

SYSTEM NAME:

Litigation Actions.

SECURITY CLASSIFICATION:

Sensitive but unclassified; some material may be made public as part of court filings or other judicial proceedings.

SYSTEM LOCATION:

Federal Election Commission, Office of General Counsel, Litigation Division, 999 E Street, NW., Washington, DC 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, and their counsel, who have brought judicial action against the Commission and individuals, and their counsel, against whom the Commission has brought judicial action pursuant to 2 U.S.C. 437g or 437h, 26 U.S.C. 9011 or 9041, 5 U.S.C. 552 or any other statute; witnesses, and their counsel; individuals or organizations filing amicus briefs; current and former FEC staff assigned to handle the matter.

CATEGORIES OF RECORDS IN THE SYSTEM:

All documents incident to a lawsuit, including pleadings, discovery materials, motions, briefs, inter-office communications, memoranda, orders, and correspondence with opposing counsel, joint counsel or the Department of Justice. May include the name, address, telephone number, e-mail address, employment information, political activity or affiliations and financial records of any individual covered by the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 U.S.C. 437g(a)(6), 437g(a)(8), 437g(a)(11), and 437h; Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, 116 Stat. 81, sec. 403.

PURPOSE(S):

The Federal Election Campaign Act of 1971, as amended, authorizes the FEC to prosecute and defend certain litigation in the Federal courts. *See, e.g.*, 2 U.S.C. 437g(a). The FEC gathers or creates the records in this system in the course of prosecuting or defending such litigation. These records are maintained for historical purposes and for consultation as precedent in subsequent judicial or administrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information contained in the records may be disclosed as follows:

1. To the Department of Justice when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed, after careful review, by the Federal Election Commission to be relevant and necessary to the litigation, provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

2. To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency, or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, after careful review, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

3. To the news media or the general public, factual information the disclosure of which would be in the public interest and which would not constitute an unwarranted invasion of personal privacy.

4. To appropriate Federal, foreign, State, local, tribal, or other public authorities responsible for enforcing, investigating or prosecuting civil or criminal violations of law or as necessary to facilitate parallel investigations or to assist the other agency with the investigation or prosecution of a matter within its jurisdiction.

5. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, to enable them to protect the safety of Commission employees and visitors and the security of the Commission's workplace; and to assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of Commission facilities.

6. To any source or potential source from which information is requested in the course of an investigation concerning the retention of an employee or other personnel action (other than hiring), or the retention of a security clearance, contract, grant, license, or other benefit, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

7. To a Federal, State, local, foreign, tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

8. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2903 and 2904.

9. To contractors (including employees of contractors), grantees, experts, or volunteers who have been engaged to assist the agency in the performance of a contract, service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity for the agency. Recipients shall be required to comply with the requirements of the

Privacy Act of 1974, as amended, 5 U.S.C. 552a.

10. To an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee or former employee, but only to the extent that information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

11. To officials of labor organizations when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

12. To agencies, offices, or establishments of the executive, legislative, or judicial branch of the Federal or State government after receipt of request and where the records or information is relevant and necessary to a decision on an employee's disciplinary or other administrative action (excluding a decision on hiring). The agency will take reasonable steps to ensure that the records are timely, relevant, accurate, and complete enough to assure fairness to the employee affected by the disciplinary or administrative action.

13. To appropriate agencies, entities, and persons when (1) the agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper record; microfilm; electronic form on agency computer networks or other electronic recording media.

RETRIEVABILITY:

Microfilm and paper records are indexed by name of party litigant and, as applicable, by microfilm roll and frame number.

Electronic records may be retrieved using the agency computer network and shared drawers, Case Management System (CMS), LSI Imaging system, Docs open, DVDs, and Concordance databases.

SAFEGUARDS:

Access to the records is limited to employees with a need to know the information to conduct civil litigation on behalf of the agency or to ensure legal consistency in other proceedings.

Microfilm and paper records are kept in locked filing cabinets or in limited access areas under personal surveillance during working hours, and in locked rooms at other times.

All electronic records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include the application of appropriate access control mechanisms to ensure the confidentiality, integrity, and availability of those records and that they are only accessed by those with a need to know and dictated by their official duties.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with FEC records control schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Associate General Counsel for Litigation, Office of General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202/694–1650).

NOTIFICATION PROCEDURE:

A request for notification of the existence of records may be made in person or in writing to the Associate General Counsel for Litigation, Office of General Counsel, 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

An individual interested in gaining access to a record pertaining to him or her may make a request in person or in writing to the Associate General Counsel for Litigation, Office of General Counsel, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

CONTESTING RECORD PROCEDURES:

Individuals interested in contesting the information contained in their records or the denial of access to such information should notify the Associate General Counsel for Litigation, Office of General Counsel, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's regulations for contesting initial denials for access to or amendment of records, 11 CFR parts 1.7–1.9, 41 FR 43064 (1976).

RECORD SOURCE CATEGORIES:

Information is obtained from a variety of sources, including but not limited to individual party litigants and counsel, witnesses, third parties, other agencies, court personnel and the Federal Election Commission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records in this system are exempt from individual access under 5 U.S.C. 552a(d)(5).

FEC 10

SYSTEM NAME:

Letter File. Public Communications.

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATION:

Federal Election Commission, Information Division, 999 E Street, NW., Washington, DC 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have written to the FEC requesting answers to specific questions related to the Federal Election Campaign Act, as amended; current and former FEC staff assigned to handle requests for information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for information and FEC responses thereto. May include name, address, telephone number, e-mail address of the requestors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 U.S.C. 438(a).

PURPOSE(S):

Commission staff maintain these records to respond to and manage

inquiries directed to the Commission. The documents are also retained for use as a reference in subsequent requests for information and to keep track of the types of inquiries received by the Commission.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information contained in the records may be disclosed as follows:

1. To the Department of Justice when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed, after careful review, by the Federal Election Commission to be relevant and necessary to the litigation, provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

2. To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency, or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, after careful review, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

3. To appropriate Federal, foreign, State, local, tribal, or other public authorities responsible for enforcing, investigating or prosecuting civil or criminal violations of law or as necessary to facilitate parallel investigations or to assist the other agency with the investigation or prosecution of a matter within its jurisdiction.

4. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, to enable them to protect the safety of Commission employees and visitors and the security of the Commission's workplace; and to assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of Commission facilities.

5. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the written request of the individual about whom the record is maintained (e.g., a constituent request). Disclosure will not be made until the congressional office has furnished appropriate documentation of the individual's request, such as a copy of the individual's written request.

6. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2903 and 2904.

7. To contractors (including employees of contractors), grantees, experts, or volunteers who have been engaged to assist the agency in the performance of a contract, service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity for the agency. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

8. To an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee or former employee, but only to the extent that information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

9. To the Office of Personnel Management for matters concerned with oversight activities (necessary for the Office of Personnel Management to carry out its legally-authorized Government-wide personnel management programs and functions) and in their role as an investigation agency.

10. To officials of labor organizations when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

11. To agencies, offices, or establishments of the executive, legislative, or judicial branch of the Federal or State government after receipt of request and where the records or information is relevant and necessary to a decision on an employee's disciplinary or other administrative action (excluding a decision on hiring). The agency will take reasonable steps to ensure that the records are timely, relevant, accurate, and complete enough to assure fairness to the employee affected by the disciplinary or administrative action.

12. To appropriate agencies, entities, and persons when (1) the agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic form on agency computer networks and as paper records.

SAFEGUARDS:

Records are under the custody of designated employees of the Commission. Access to the records is limited to employees requiring access. All electronic records are protected from unauthorized access through

appropriate administrative, physical, and technical safeguards. These safeguards include the application of appropriate access control mechanisms to ensure the confidentiality, integrity, and availability of those records and that they are only accessed by those with a need to know and dictated by their official duties.

RETRIEVABILITY:

Records may be retrieved by name of the requester.

RETENTION AND DISPOSAL:

Retained in-house for one year; shipped afterward to general storage in accordance with FEC records control schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Staff Director for Information, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202/694–1100).

NOTIFICATION PROCEDURE:

A request for notification of the existence of records may be made in person or in writing to the Assistant Staff Director for Information, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

An individual interested in gaining access to a record pertaining to him or her may make a request in person or in writing to the Assistant Staff Director for Information, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

CONTESTING RECORD PROCEDURES:

Individuals interested in contesting the information contained in their records or the denial of access to such information should notify the Assistant Staff Director for Information, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's regulations for contesting initial denials for access to or amendment of records, 11 CFR parts 1.7–1.9, 41 FR 43064 (1976).

RECORD SOURCE CATEGORIES:

Individuals who submit requests for information to the Commission in writing.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FEC 11

SYSTEM NAME:

Contributor Name Index System.

SECURITY CLASSIFICATION:

Public.

SYSTEM LOCATION:

Federal Election Commission, Information Technology Division, 999 E Street, NW., Washington, DC 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been listed on campaign finance reports as having given an aggregate amount in excess of $200 or more in a calendar year to a candidate for Federal office required to file reports of contributions and expenditures, sources of receipts and recipients of disbursements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of contributors, City, State and zip code, occupation, employer, and contribution amount.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 U.S.C. 434 and 441a.

PURPOSE(S):

The information contained in this system of records is used to inform the public of the amounts raised and spent by candidates for Federal office, as well as the source from which the amounts are raised and the recipients of the amounts spent; also to verify compliance with the Federal Election Campaign Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None involving nonpublic information. All records in this system are public.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic format on agency computer networks on the Internet at the FEC's web page.

RETRIEVABILITY:

Indexed by last name of contributor and by name of recipient committee. Retrieval may be accomplished by any member of the public using the Commission's Web site.

SAFEGUARDS:

All electronic records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include the application of appropriate access control mechanisms to ensure the confidentiality, integrity, and availability of those records and that they are only accessed by those with a need to know and dictated by their official duties.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with FEC records control schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Staff Director/Chief Information Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202/694–1250).

NOTIFICATION PROCEDURE:

A request for notification of the existence of records may be made in person or in writing to the Deputy Staff Director/Chief Information Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

An individual interested in gaining access to a record pertaining to him or her may make a request in person or in writing to the Deputy Staff Director/Chief Information Officer, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

CONTESTING RECORD PROCEDURES:

Individuals interested in contesting the information contained in their records or the denial of access to such information should notify the Deputy Staff Director/Chief Information Officer, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's regulations for contesting initial denials for access to or amendment of records, 11 CFR parts 1.7–1.9, 41 FR 43064 (1976).

RECORD SOURCE CATEGORIES:

Individual contributors, candidate and political committees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FEC 12

SYSTEM NAME:

Inspector General Investigative Files.

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATION:

Federal Election Commission, Office of the Inspector General (OIG), 999 E Street, NW., Washington, DC 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the subjects of complaints relating to the programs and operations of the Commission. Subjects include, but are not limited to, current and former FEC employees; current and former employees of contractors and subcontractors in their personal capacity, where applicable; and other persons whose actions affect the FEC, its programs or operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaints, referrals from other agencies, correspondence, investigative notes, interviews, statements from witnesses, transcripts taken during investigation, affidavits, copies of all subpoenas issued and responses thereto, interrogatories and responses thereto, reports, internal staff memoranda, staff working papers and other documents and records or copies obtained or relating to complaints and investigations. May include the name, address, telephone number, e-mail address, employment information, and financial records of the subjects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act Amendments of 1988, Pub. L. 100–504, amending the Inspector General Act of 1978, Pub. L. 95–452, 5 U.S.C. app. 3.

PURPOSE(S):

These records are used to document the conduct and outcome of inquiries, complaints, and investigations concerning allegations of fraud, waste, and abuse that affect the FEC. The information is used to report the results of investigations to FEC management, contractors, prosecutors, law enforcement agencies, Congress, and others for an action deemed appropriate. These records are used also to retain sufficient information to fulfill reporting requirements and to maintain records related to the OIG's activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information contained in the records may be disclosed as follows:

1. To the Department of Justice when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Inspector General, after careful review, to be relevant and necessary to the litigation, provided, however, that in each case the Inspector General determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

2. To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency, or any of its components, is a party to litigation or has an interest in such litigation, and the Inspector General determines that, after careful review, the use of such records is relevant and necessary to the litigation, provided, however, that the Inspector General determines that disclosure of the records is compatible with the purpose for which the records were collected.

3. To the appropriate Federal, foreign, State, local, tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, when information indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutorial responsibility of the receiving entity.

4. To any source or potential source from which information is requested in the course of an investigation concerning the retention of an employee or other personnel action (other than hiring), or the retention of a security clearance, contract, grant, license, or other benefit, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

5. To a Federal, State, local, foreign, tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

6. To the White House in response to an inquiry made at the written request of the individual about whom the record is maintained. Disclosure will not be made until the White House has furnished appropriate documentation of the individual's request, such as a copy of the individual's written request.

7. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the written request of the individual about whom the record is maintained (e.g., a constituent request). Disclosure will not be made until the congressional office has furnished appropriate documentation of the individual's request, such as a copy of the individual's written request.

8. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2903 and 2904.

9. To agency or OIG contractors (including employees of contractors), grantees, experts, or volunteers who have been engaged to assist the agency or OIG in the performance of a contract, service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity for the agency or OIG. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

10. To an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or

settlement of an administrative grievance, complaint, claim, or appeal filed by an employee or former employee, but only to the extent that information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

11. To the Office of Personnel Management for matters concerned with oversight activities (necessary for the Office of Personnel Management to carry out its legally-authorized Government-wide personnel management programs and functions) and in their role as an investigation agency.

12. To officials of labor organizations when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

13. To agencies, offices, or establishments of the executive, legislative, or judicial branch of the Federal or State government after receipt of request and where the records or information is relevant and necessary to a decision on an employee's disciplinary or other administrative action (excluding a decision on hiring). The agency will take reasonable steps to ensure that the records are timely, relevant, accurate, and complete enough to assure fairness to the employee affected by the disciplinary or administrative action.

14. To debt collection contractors to collect debts owed to the Government, as authorized under the Debt Collection Act of 1982, 31 U.S.C. 3718, and subject to the Privacy Act safeguards.

15. To officials who have been engaged to assist the Office of Inspector General in the conduct of inquiries, complaints, and investigations who need to have access to the records in order to perform the work. This disclosure category includes members of the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency, and officials and administrative staff within their chain of command. Recipients shall be required to comply with the requirements of the Privacy Act.

16. Information may be disclosed to officials charged with the responsibility to conduct qualitative assessment reviews of internal safeguards and management procedures employed in investigative operations. This disclosure category includes members of the President's Council on Integrity and Efficiency, Executive Council on Integrity and Efficiency, and officials and administrative staff within their investigative chain of command, as well as authorized officials of the Department of Justice and the Federal Bureau of Investigation. Recipients shall be required to comply with the requirements of the Privacy Act.

17. To appropriate agencies, entities, and persons when (1) the agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

We may disclose the record or information from this system, pursuant to 5 U.S.C. 552a(b)(12), to consumer reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, as amended, 31 U.S.C. 3701(a)(3), in accordance with section 3711(f) of Title 31.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in both a paper and electronic format.

RETRIEVABILITY:

The records may be retrieved by the name of the subject of the complaint/investigation or by a unique control number assigned to each complaint/investigation.

SAFEGUARDS:

The records are maintained in limited access areas within the building. Access is limited to Office of Inspector General employees whose official duties require access. The paper records and electronic information not stored on computers are maintained in lockable cabinets in a locked room. Information stored on computers is on a restricted access server located in a locked room. All electronic records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include the application of appropriate access control mechanisms to ensure the confidentiality, integrity, and availability of those records and that they are only accessed by those with a need to know and dictated by their official duties.

RETENTION AND DISPOSAL:

These records will be maintained permanently until disposition authority is granted by the National Archives and Records Administration (NARA). Upon approval, the records will be retained in accordance with NARA's schedule and disposed of in a secure manner.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202/694–1015).

NOTIFICATION PROCEDURE:

A request for notification of the existence of records may be made in person or in writing to the FEC Inspector General, 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

An individual interested in gaining access to a record pertaining to him or her may make a request in person or in writing to the FEC Inspector General at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

CONTESTING RECORD PROCEDURES:

Individuals interested in contesting the information contained in their records or the denial of access to such information should notify the FEC Inspector General at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's regulations for contesting initial denials for access to or amendment of records, 11 CFR parts 1.7–1.9, 41 FR 43064 (1976).

RECORD SOURCE CATEGORIES:

Complaints, subjects, third parties who have been requested to produce relevant information, referring agencies, and OIG personnel assigned to handle complaints/investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

System exempt under 5 U.S.C. 552a(j)(2) and 5 U.S.C. 552a(k)(2). See 11 CFR 1.14.

FEC 13

SYSTEM NAME:

Travel Records of Employees.

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATION:

Federal Election Commission, Administration Division, 999 E Street, NW., Washington, DC 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All FEC employees who travel pursuant to authorized official agency business.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel authorizations; travel advance requests; E-travel profiles, and travel vouchers, including receipts for hotels, car rentals, meals, phone calls, mileage reimbursement and other allowable expenses. May include: Name, address, Social Security Number, telephone number, job title, grade salary level, security clearance, e-mail address, and government credit card information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Travel Expense Amendments Act of 1975 (Pub. L. 94–22).

PURPOSE(S):

To facilitate the timely reimbursement to employees for authorized and official travel for the FEC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information contained in the records may be disclosed as follows:

1. To the Department of Justice when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed, after careful review, by the Federal Election Commission to be relevant and necessary to the litigation, provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

2. To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency, or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, after careful review, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

3. To appropriate Federal, foreign, State, local, tribal, or other public authorities responsible for enforcing, investigating or prosecuting civil or criminal violations of law or as necessary to facilitate parallel investigations or to assist the other agency with the investigation or prosecution of a matter within its jurisdiction.

4. To any source or potential source from which information is requested in the course of an investigation concerning the retention of an employee or other personnel action (other than hiring), or the retention of a security clearance, contract, grant, license, or other benefit, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

5. To a Federal, State, local, foreign, tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

6. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, to enable them to protect the safety of Commission employees and visitors and the security of the Commission's workplace; and to assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of Commission facilities.

7. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the written request of the individual about whom the record is maintained (e.g., a constituent request). Disclosure will not be made until the congressional office has furnished appropriate documentation of the individual's request, such as a copy of the individual's written request.

8. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2903 and 2904.

9. To contractors (including employees of contractors), grantees, experts, or volunteers who have been engaged to assist the agency in the performance of a contract, service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity for the agency. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

10. To an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee or former employee, but only to the extent that information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

11. To the Office of Personnel Management for matters concerned with oversight activities (necessary for the Office of Personnel Management to carry out its legally-authorized Government-wide personnel

management programs and functions) and in their role as an investigation agency.

12. To officials of labor organizations when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

13. To agencies, offices, or establishments of the executive, legislative, or judicial branch of the Federal or State government after receipt of request and where the records or information is relevant and necessary to a decision on an employee's disciplinary or other administrative action (excluding a decision on hiring). The agency will take reasonable steps to ensure that the records are timely, relevant, accurate, and complete enough to assure fairness to the employee affected by the disciplinary or administrative action.

14. To the General Services Administration, which has been engaged to assist the agency in processing and administering certain functions related to this system of records.

15. To appropriate agencies, entities, and persons when (1) the agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Indexed by employee name.

SAFEGUARDS:

Paper records are locked in file cabinets located in a cipher-locked room. All electronic records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include the application of appropriate access control mechanisms to ensure the confidentiality, integrity, and availability of those records and that they are only accessed by those with a need to know and dictated by their official duties.

RETENTION AND DISPOSAL:

Travel records are maintained for seven years and then disposed of in accordance with FEC records control schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Accounting Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202/694–1215).

NOTIFICATION PROCEDURE:

A request for notification of the existence of records may be made in person or in writing to the Accounting Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

An individual interested in gaining access to a record pertaining to him or her may make a request in person or in writing to the Accounting Officer, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

CONTESTING RECORD PROCEDURES:

Individuals interested in contesting the information contained in their records or the denial of access to such information should notify the Accounting Officer, Federal Election Commission, at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's regulations for contesting initial denials for access to or amendment of records, 11 CFR parts 1.7–1.9, 41 FR 43064 (1976).

RECORD SOURCE CATEGORIES:

The subject individual; the Federal Election Commission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FEC 14

SYSTEM NAME:

Alternative Dispute Resolution Program.

SECURITY CLASSIFICATION:

Sensitive but unclassified; some material may be made public after cases are closed.

SYSTEM LOCATION:

Federal Election Commission, Alternative Dispute Resolution Division, 999 E Street, NW., Washington, DC 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed complaints under the Federal Election Campaign Act (2 U.S.C. 431 *et seq.*) (complainants); individuals who are the subjects of complaints (respondents), including treasurers of respondent political committees, and counsel; candidates filing late or inaccurate reports, or no reports; witnesses and other individuals providing information with respect to a compliance matter; agency personnel, including attorneys and investigators.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaints, referrals, and responses thereto; documents generated in the course of internally-generated investigations of reports on file at the Commission; documents generated and received in the course of investigations of complaints and referrals, including depositions, interrogatories and responses thereto, other documentary evidence, and memoranda and notes created by agency personnel with respect to investigations. May include the name, address, telephone number, e-mail address, employment information, political activity and financial or tax records of the subjects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 U.S.C. 437g(a)(1), (2), (4) and (5); 438(a)(7) and 438(b); 5 U.S.C. 572; 26 U.S.C. 9006 and 9038.

PURPOSE(S):

The Alternative Dispute Resolution (ADR) Office maintains active files on complaints forwarded to it from Commissioners, the Reports Analysis Division, the Audit Division, or the Office of General Counsel, including matters stemming from audits for cause. The Commission determines whether the case is appropriate for the ADR program. Resolutions reached in negotiations are submitted to the Commissioners for final approval. If a resolution is not reached in bilateral

negotiation, the case may proceed to mediation. Upon the closing of the ADR matter, certain documents are placed on the public record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information contained in the records may be disclosed as follows:

1. To the Department of Justice when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed, after careful review, by the Federal Election Commission to be relevant and necessary to the litigation, provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

2. To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency, or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, after careful review, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

3. Upon the closing of the ADR matter, to place certain documents on the public record of the agency, pursuant to guidance promulgated by the Commission. Personal information is redacted from documents before they are made public.

4. To appropriate Federal, foreign, State, local, tribal, or other public authorities responsible for enforcing, investigating or prosecuting civil or criminal violations of law or as necessary to facilitate parallel investigations or to assist the other agency with the investigation or prosecution of a matter within its jurisdiction.

5. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, to enable them to protect the safety of Commission employees and visitors and the security of the Commission's workplace; and to assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of Commission facilities.

6. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the written request of the individual about whom the record is maintained (e.g., a constituent request). Disclosure will not be made until the congressional office has furnished appropriate documentation of the individual's request, such as a copy of the individual's written request.

7. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2903 and 2904.

8. To contractors (including employees of contractors), grantees, experts, mediators, or volunteers who have been engaged to assist the agency in the performance of a contract, service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity for the agency. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

9. To an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee or former employee, but only to the extent that information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

10. To the Office of Personnel Management for matters concerned with oversight activities (necessary for the Office of Personnel Management to carry out its legally-authorized Government-wide personnel management programs and functions) and in their role as an investigation agency.

11. To officials of labor organizations when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

12. To agencies, offices, or establishments of the executive, legislative, or judicial branch of the Federal or State government after receipt of request and where the records or information is relevant and necessary to a decision on an employee's disciplinary or other administrative action (excluding a decision on hiring). The agency will take reasonable steps to ensure that the records are timely, relevant, accurate, and complete enough to assure fairness to the employee affected by the disciplinary or administrative action.

13. To appropriate agencies, entities, and persons when (1) the agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in both paper and electronic form and on microfilm.

RETRIEVABILITY:

By ADR case number or name of the respondent.

SAFEGUARDS:

This system is kept in locked filing cabinets in limited access areas under personal surveillance during working hours, and in locked filing cabinets in locked rooms at other times. All electronic records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include the application of appropriate access control mechanisms to ensure the confidentiality, integrity, and availability of those records and that they are only accessed by those with a need to know and dictated by their official duties.

RETENTION AND DISPOSAL:

Records are maintained and disposed of on accordance with FEC records control schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Alternative Dispute Resolution Office, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202/219–1670).

NOTIFICATION PROCEDURE:

A request for notification of the existence of records may be made in person or in writing to the Director, Alternative Dispute Resolution Office, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

An individual interested in gaining access to a record pertaining to him or her may make a request in person or in writing to the Director, Alternative Dispute Resolution at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

CONTESTING RECORD PROCEDURES:

Individuals interested in contesting the information contained in their records or the denial of access to such information should notify the Director, Alternative Dispute Resolution, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's regulations for contesting initial denials for access to or amendment of records, 11 CFR parts 1.7–1.9, 41 FR 43064 (1976).

RECORD SOURCE CATEGORIES:

Complainants, respondents or committee treasurers, witnesses, and the Federal Election Commission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

With respect to open investigations, the system is exempt pursuant to 5 U.S.C. 552a(k)(2). See 11 CFR part 1.14.

FEC 15

SYSTEM NAME:

FEC Freedom of Information Act System.

SECURITY CLASSIFICATION:

Sensitive but unclassified; some material may become public under 5 U.S.C. 552.

SYSTEM LOCATION:

Federal Election Commission, Office of General Counsel, General Law and Advice Division, 999 E Street, NW., Washington, DC 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons requesting information from the Commission pursuant to provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and persons who are the subjects of FOIA requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests, response letters, appeals, appeal determinations and electronic tracking data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552; 5 U.S.C. 301; Executive Order 13392.

PURPOSE(S):

To enable Commission staff to process FOIA requests and appeals; and to prepare an annual report to the Department of Justice on the Commission's FOIA activity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information contained in the records may be disclosed as follows:

1. To the Department of Justice when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed, after careful review, by the Federal Election Commission to be relevant and necessary to the litigation, provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

2. To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency, or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, after careful review, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

3. To employees of other Federal agencies when a FOIA request must be referred to such an agency for response.

4. To appropriate Federal, foreign, State, local, tribal, or other public authorities responsible for enforcing, investigating or prosecuting civil or criminal violations of law or as necessary to facilitate parallel investigations or to assist the other agency with the investigation or prosecution of a matter within its jurisdiction.

5. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, to enable them to protect the safety of Commission employees and visitors and the security of the Commission's workplace; and to assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of Commission facilities.

6. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the written request of the individual about whom the record is maintained (e.g., a constituent request). Disclosure will not be made until the congressional office has furnished appropriate documentation of the individual's request, such as a copy of the individual's written request.

7. To the National Archives and Records Administration or to the

General Services Administration for records management inspections conducted under 44 U.S.C. 2903 and 2904.

8. To contractors (including employees of contractors), grantees, experts, or volunteers who have been engaged to assist the agency in the performance of a contract, service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity for the agency. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

9. To appropriate agencies, entities, and persons when (1) the agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in both a paper and electronic format. Requests received by e-mail are stored on the FEC's e-mail server.

RETRIEVABILITY:

Indexed by name of requester.

SAFEGUARDS:

Paper records are maintained in locked filing cabinets in limited access areas under personal surveillance during working hours and in locked rooms at other times. All electronic records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include the application of appropriate access control mechanisms to ensure the confidentiality, integrity, and availability of those records and that they are only accessed by those with a need to know and dictated by their official duties.

RETENTION AND DISPOSAL:

FOIA requests are retained in accordance with General Records Schedule 14, as approved by National Archives and Records Administration (NARA).

SYSTEM MANAGER(S) AND ADDRESS:

Chief FOIA Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202/694–1650)

NOTIFICATION PROCEDURE:

A request for notification of the existence of records may be made in person or in writing to the Chief FOIA Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

An individual interested in gaining access to a record pertaining to him or her may make a request in person or in writing to the Chief FOIA Officer, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

CONTESTING RECORD PROCEDURES:

Individuals interested in contesting the information contained in their records or the denial of access to such information should notify the Chief FOIA Officer, Federal Election Commission at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's regulations for contesting initial denials for access to or amendment of records, 11 CFR parts 1.7–1.9, 41 FR 43064 (1976).

RECORD SOURCE CATEGORIES:

Persons requesting information from the Commission pursuant to the Freedom of Information Act and employees processing the requests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FEC 16

SYSTEM NAME:

HSPD–12: Identity Management, Personnel Security, Physical and Logical Access Files.

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATION:

Data covered by this system is maintained at the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

CATGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who require regular, ongoing access to agency facilities, information technology systems and networks, including applicants for employment or contracts with the FEC, agency employees, contractors, students, interns, volunteers, affiliates, and individuals formerly in any of these positions. The system also includes individuals authorized to perform or use services provided in agency facilities (e.g., Health Unit).

(2) Individuals who have been issued HSPD–12 compliant credentials from other Federal agencies who require access to agency facilities.

(3) Visitors and other individuals who require infrequent access to agency facilities including services provided in agency facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Copies of Forms SF–85, SF–85P, SF–86, SF–87A and FD 258 as supplied by individuals covered by the system.

(2) Enrollment records to be maintained in the system on individuals applying for the Personal Identity Verification (PIV) program and a PIV credential. May include the following data fields: full name, former names, birth date, birth place, Social Security Number, signature, home address, phone numbers, employment history, residential history, education and degrees earned, applicant ID number, digital color photograph, names of associates and references and their contact information, citizenship, names of relatives, birthdates and places of relatives, citizenship of relatives, names of relatives who work for the Federal government, criminal history, mental health history, drug use, financial information, fingerprints, biometric template (two fingerprints), organization/office of assignment, employee affiliation, work e-mail address, work telephone number(s), office address, copies of identity source documents, employee status, military status, summary report of investigation, results of suitability decisions, Government agency code, requests for appeal and PIV issuance location. Additional records include copies of letters of transmittal between the FEC and the Office of Personnel Management

concerning the individual's background investigation; copies of certification clearance status and briefing and/or copies of debriefing certificates signed by the individual, as appropriate and copies of PIV application forms as supplied by individuals covered by the system.

(3) Records maintained on individuals issued credentials by the agency. May include the following data fields: hair color; eye color, height; weight; agency affiliation (i.e., employee, contractor, volunteer, etc.); telephone number; PIV card issuance and expiration dates, personal identification number (PIN); Cardholder Unique Identifier (CHUID); card management keys; results of background investigation; PIV request form; PIV registrar approval signature; PIV card serial number; digital certificate(s) serial number; copies of I–9 documents used to verify identification or information derived from those documents such as document title, document issuing authority, document number, document expiration date, or document other information; computer system user name; user access and permission rights, authentication certificates; and digital signature information.

(4) Individuals enrolled in the PIV managed service will be issued a PIV card. The PIV card contains the following mandatory visual personally identifiable information: name, photograph, employee affiliation, organizational affiliation, PIV card expiration date, agency card serial number, and color-coding for employee affiliation. Additional information may include cardholder physical characteristics (height, weight, and eye and hair color). The card also contains an integrated circuit chip which is encoded with the following mandatory data elements which comprise the standard data model for PIV logical credentials: PIV card PIN, cardholder unique identifier (CHUID), PIV authentication digital certificate, and two fingerprint biometric templates. The PIV data model may also include the following logical credentials: digital certificate for digital signature, digital certificate for key management, card authentication keys, and card management system keys. All PIV logical credentials can only be read by machine.

(5) Records maintained on visitors and other individuals who require infrequent access to agency facilities. May include the following data fields: Name, signature, image (photograph), Social Security Number (or one of the following: driver's license number, ''green card'' number, visa number, or other ID number), images of relevant ID document(s), U.S. Citizenship (yes or no/logical data field), date of entry, time of entry, location of entry, time of exit, location of exit, purpose of entry, agency point of contact, company name, security access category, and access status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Executive Order 10450; Homeland Security Presidential Directive 12 (HSPD–12), Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004; the Federal Property and Administrative Services Act of 1949, as amended; and Presidential Memorandum on Upgrading Security at Federal Facilities, June 28, 1995.

PURPOSE(S):

The primary purposes of the system are:

(1) To document and support decisions regarding:

(a) Clearance for access to sensitive but unclassified information;

(b) Suitability, eligibility, and fitness for service of applicants for Federal employment and contract positions, including students, interns, or volunteers to the extent their duties require access to Federal facilities and/or information technology systems and their occupants and users;

(2) To ensure the safety and security of agency facilities and/or information technology systems, and their occupants and users;

(3) To verify that all persons entering agency facilities and/or agency information technology systems with or without smart cards are authorized to enter them;

(4) To provide for interoperability and trust in allowing physical access to individuals entering Federal facilities; and

(5) To allow logical access to Federal information systems, networks, and resources on a government-wide basis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information contained in these records may be disclosed as follows:

1. To the Department of Justice when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed, after careful review, by the Federal Election Commission to be relevant and necessary to the litigation, provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

2. To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

a. The agency, or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency, or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, after careful review, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

3. Except as noted on Forms SF–85, SF 85–P and SF–86, to appropriate Federal, foreign, State, local, tribal, or other public authorities responsible for enforcing, investigating or prosecuting civil or criminal violations of law or as necessary to facilitate parallel investigations or to assist the other agency with the investigation or prosecution of a matter within its jurisdiction.

4. To any source or potential source from which information is requested in the course of an investigation concerning the retention of an employee or other personnel action (other than hiring), or the retention of a security clearance, contract, grant, license, or other benefit, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

5. To a Federal, State, local, foreign, tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or

the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

6. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, to enable them to protect the safety of Commission employees and visitors and the security of the Commission's workplace; and to assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of Commission facilities.

7. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the written request of the individual about whom the record is maintained (e.g., a constituent request). Disclosure will not be made until the congressional office has furnished appropriate documentation of the individual's request, such as a copy of the individual's written request.

8. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2903 and 2904.

9. To contractors (including employees of contractors), grantees, experts, or volunteers who have been engaged to assist the agency in the performance of a contract, service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity for the agency. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

10. To an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee or former employee, but only to the extent that information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

11. To the Office of Personnel Management for matters concerned with oversight activities (necessary for the Office of Personnel Management to carry out its legally-authorized Government-wide personnel management programs and functions) and in their role as an investigation agency.

12. To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which records were collected and maintained.

13. To an approved shared service provider in fulfillment of the terms of the HSPD–12 shared services agreement. Note: Although the shared service provider will manage the system that produces the identity credentials used by the agency, the shared service provider will not have access to the content of the data provided by the agency except to the extent that is required to provide for its integrity, reliability and security.

14. To other Federal agencies providing enrollment services to the shared service provider when the shared service provider has entered into agreements with these agencies to provide enrollment services to their employees, contractors, etc. but not identification credentials, through third party enrollment brokers serving as links in the secure chain of custody for the HSPD–12 process.

15. To appropriate agencies, entities, and persons when (1) the agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

16. To designated agency personnel for controlled access to specific records for the purposes of performing authorized audit or authorized oversight and administrative functions. All access is controlled systematically through authentication using PIV credentials based on access and authorization rules for specific audit and administrative functions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), records can be disclosed to consumer reporting agencies as they are defined in the Fair Credit Reporting Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper and electronically in a secure location.

RETRIEVABILITY:

Records are retrievable by name of employee or covered individual, Cardholder Unique Identification Number, Applicant ID, Social Security Number, and/or by any other unique individual identifier.

SAFEGUARDS:

Access to records covered by the system will be permitted only to authorized personnel in accordance with requirements found in agency Privacy Act regulations. Persons given roles in the PIV process must complete training specific to their roles to ensure they are knowledgeable about how to protect individually identifiable information regardless of how and where it is stored. Paper records will be maintained in locked filing cabinets in limited access areas within the Office of Human Resources and Labor Relations under personal surveillance during working hours and in locked rooms at other times. Access to the records will be limited to those employees who have a need for them in the performance of their official duties. All agency electronic records will be protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include the application of appropriate access control mechanisms to ensure the confidentiality, integrity, and availability of those records and that they are only accessed by those with a need to know and dictated by their official duties. Should the shared service provider be another Federal agency, records maintained by that agency may also be subject to the safeguards outlined in that agency's systems of records notice.

RETENTION AND DISPOSAL:

(1) Paper personnel security records relating to individuals covered by the system are generally retained and disposed in accordance with General Records Schedule 18, Item No. 22, approved by the National Archives and Records Administration (NARA).

(2) In accordance with HSPD–12, PIV cards are deactivated within 18 hours of cardholder separation, loss of card, or expiration. The information on PIV cards is maintained in accordance with General Records Schedule 11, Item No. 4. PIV cards are destroyed by cross-cut shredding no later than 90 days after deactivation.

(3) Building security records relating to persons covered by this system are retained in accordance with General Records Schedule 18, Item No. 17. Unless retained for specific ongoing security investigations:

(a) Records relating to individuals other than employees are destroyed two years after ID security card expiration date;

(b) Records relating to date and time of entry and exit of employees are destroyed two years after date of entry and exit; and

(c) All other records relating to employees are destroyed two years after ID security card expiration date.

SYSTEM MANAGER(S) AND ADDRESS:

(1) For personnel security: Personnel Security Manager, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(2) For physical security: Administrative Services Manager, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(3) For logical security: Information Systems Security Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

NOTIFICATION PROCEDURES:

A request for notification of the existence of personnel security records may be made in person or in writing and addressed to the FEC personnel security manager identified in (1), above. A request for notification of the existence of physical security records may be made in person or in writing and addressed to the FEC physical security manager identified in (2), above. A request for notification of the existence of logical security records may be made in person or in writing and addressed to the FEC logical security manager identified in (3), above. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

An individual interested in gaining access to a personnel security record pertaining to him or her may make a request in person or in writing to the FEC personnel security manager identified in (1), above at the following address: 999 E Street, NW., Washington, DC 20463. An individual interested in gaining access to a physical security record pertaining to him or her may make a request in person or in writing to the FEC physical security manager identified in (2), above at the following address: 999 E Street, NW., Washington, DC 20463. An individual interested in gaining access to a logical security record pertaining to him or her may make a request in person or in writing to the FEC logical security manager identified in (3), above at the following address: 999 E Street, NW., Washington, DC 20463. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

CONTESTING RECORD PROCEDURES:

Individuals interested in contesting the information contained in their personnel security records or the denial of access to such information should notify the FEC personnel security manager identified in (1), above at the following address: 999 E Street, NW., Washington, DC 20463. Individuals interested in contesting the information contained in their physical security records or the denial of access to such information should notify the FEC physical security manager identified in (2), above at the following address: 999 E Street, NW., Washington, DC 20463. Individuals interested in contesting the information contained in their logical security records or the denial of access to such information should notify the FEC logical security manager identified in (3), above at the following address: 999 E Street, NW., Washington, DC 20463. For additional information regarding contesting initial denials for access to or amendments of Privacy Act records, refer to the Commission's regulations at 11 CFR parts 1.7–1.9, 41 FR 43064 (1976).

RECORD SOURCE CATEGORIES:

Information is obtained from a variety of sources including the employee, contractor, or applicant via the use of the SF–85, SF–85P, or SF–86 and personal interviews; employers' and former employers' records; other Federal agencies supplying data on covered individuals; FBI criminal history records and other databases; financial institutions and credit reports; medical records and health care providers; and educational institutions. Information is also obtained from individuals covered by the system, supervisors, and designated approving officials, as well as other Federal agencies issuing HSPD–12 compliant cards, and HSPD–12 compliant cards carried by individuals seeking access to Commission and other Federal facilities occupied by agency employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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Wednesday,
January 2, 2008

Part V

Department of Justice

Drug Enforcement Administration

Medicine Shoppe—Jonesborough; Revocation of Registration; Notice

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 03–21]

Medicine Shoppe—Jonesborough; Revocation of Registration

On March 14, 2003, the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause to the Medicine Shoppe—Jonesborough (Respondent) of Jonesborough, Tennessee. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BM3913781, as a retail pharmacy, and the denial of any pending application for renewal of its registration, on the ground that its continued registration would be ''inconsistent with the public interest.'' Show Cause Order at 1 (citing 21 U.S.C. 823(f)).

The Show Cause Order specifically alleged that a DEA investigation had determined that between 1990 and 1995, Royce E. Blackmon, Jr., a physician located in Butler, Tennessee, had ''issued numerous controlled substance prescriptions for no legitimate medical reason.'' *Id.* The Show Cause Order alleged that in December 1995, DEA investigators visited Respondent and determined that it had filled 947 of the controlled-substance prescriptions issued by Dr. Blackmon. *Id.* at 1–2. The Show Cause Order further alleged that on October 29, 1997, DEA investigators returned to Respondent and subsequently determined that Respondent had filled an additional 3,100 controlled-substance prescriptions issued by Dr. Blackmon. *Id.* at 2. Relatedly, the Show Cause Order alleged that on October 6, 1997, Blackmon entered into an Agreed Order with the Tennessee Board of Medical Examiners which revoked his state medical license. *Id.* at 2.

The Show Cause Order next alleged that between May 1996 and December 1997, Respondent filled 124 prescriptions issued by Edmond Watts, a veterinarian practicing in Johnson City, Tennessee, notwithstanding that Watts' DEA registration and state veterinary license had expired on May 31, 1996, and February 29, 1996, respectively. *Id.* at 2. The Show Cause Order further alleged that ''[m]any of these prescriptions were issued to persons using several aliases and false addresses,'' and that Watts was ultimately indicted and pled guilty to two state-law counts of obtaining prescription drugs by fraud. *Id.* at 2–3.

The Show Cause Order next alleged that on March 9, 1998, DEA investigators returned to Respondent to review its controlled-substance records and to conduct an accountability audit. *Id.* at 3. The Show Cause Order alleged that Mr. Jeff Street, Respondent's owner and pharmacist, told DEA investigators that ''the pharmacy's computer could not process prescription information at that time,'' and that the investigators ''would have to wait until the following morning'' to obtain the information. *Id.* The Show Cause Order further alleged ''[t]hat the following morning, Mr. Street informed investigators that the pharmacy's computer [had] 'crashed' and its data had been lost.'' *Id.* at 3. The Show Cause Order thus alleged that Respondent violated 21 U.S.C. 827(a)(3), as well as 21 CFR 1304.04 and 1304.21. *Id.*

Next, the Show Cause Order alleged that on December 14, 1999, DEA audited Respondent's handling of twenty-nine controlled substances during the period of January 11, 1999, to December 14, 1999. *Id.* The Show Cause Order alleged that the audit found that Respondent had an overage of 29,656 dosage units of diazepam, a schedule IV controlled substance, and a shortage of 3,453 dosage units of combination hydrocodone drugs, which are schedule III controlled substances. *Id.*

Relatedly, the Show Cause Order alleged that on April 10, 2001, and April 2, 2002, DEA had performed additional audits of Respondent's handling of various controlled substances and that each audit had found both overages and shortages. *Id.* at 3–4. More specifically, the Show Cause Order alleged that the April 2002 audit found that Respondent was short 4,505 tablets of some higher-strength combination hydrocodone/acetaminophen products and had overages of 2,273 lower-strength hydrocodone/acetaminophen products. *Id.* at 4. The Show Cause Order further alleged that the April 2002 audit found both ''shortages and overages of between 500 and 1,000 tablets.'' *Id.*

Finally, the Show Cause Order alleged that in analyzing Respondent's records for the period 2001 through 2002, DEA had determined that ''many patients received in excess of 2,000 dosage units of hydrocodone, often from several physicians.'' *Id.* The Show Cause Order thus alleged that ''[u]nder regulation, a pharmacy has a corresponding liability to ensure that every prescription [it] dispense[s] is for a legitimate medical purpose,'' and that ''[t]here is no indication that [Respondent] took steps to corroborate the necessity of these large amounts of controlled substances.'' Id. at 4–5.

Respondent, through its counsel, timely requested a hearing on the allegations. The matter was assigned to Administrative Law Judge (ALJ) Gail Randall, who conducted a hearing in Knoxville, Tennessee, on July 27–29, 2004, and in Greenville, Tennessee, on May 24, 2005. At the hearing, both the Government and Respondent called witnesses to testify and introduced both testimonial and documentary evidence into the record. Following the hearing, both parties filed briefs containing their proposed findings of fact and conclusions of law.

On June 9, 2006, the ALJ filed her recommended decision. In her decision, the ALJ found that while there was a factual ''dispute regarding the exact numbers involved in the three DEA audits, the record clearly shows that [the] audits and inventories of * * * Respondent revealed substantial shortages and overages of the controlled substances investigated.'' ALJ at 69. The ALJ rejected, however, the Government's contention that Respondent had failed ''on multiple occasions'' to comply with ''its corresponding responsibility to ensure that dispensed prescriptions for controlled substances were issued by the physician for a legitimate medical purpose and in the usual course of professional practice.'' Gov. Proposed Findings at 10; *see also* ALJ at 72.

While noting that ''the patient profiles did not contain any documents demonstrating that Respondent's pharmacists made any telephone calls to verify suspect prescriptions,'' the ALJ credited the testimony of Respondent's owner that he had called the doctors whose prescriptions were suspicious ''on many occasions'' to ''verify the prescriptions prior to filling them.'' ALJ at 72; *see also id.* at 75 (noting that ''Mr. Street's credible testimony concerning his personal knowledge of his customers [and] the actions he took to coordinate his dispensing with the patients' health care providers * * * dispelled many of [the] concerns'' expressed by the Government's expert witnesses). While the ALJ also found Respondent's filling of prescriptions issued by a veterinarian during 1996 and 1997 ''bothersome,'' she further reasoned that the datedness of the conduct and ''the lack of any more recent evidence of similar carelessness'' did not support the revocation of Respondent's registration. *Id.* at 78. The ALJ thus recommended that Respondent be allowed to maintain its registration subject to the condition that it undergo an annual audit by an independent auditor at its own expense for a period of three years from the date of the issuance of this Final Order. *Id.* at 78.

The Government filed exceptions to the ALJ's recommended decision. While asserting that it was not arguing ''the minutiae of the specific findings, or the issue of the credibility * * * of seriatim statements of Respondent's pharmacist owner,'' the Government's principal exception was that ''Respondent's entire defense consistently produced explanations for every fact that the Government proved,'' and that ''for every patient that the Government showed * * * was receiving excessive amounts of controlled substances, Respondent had a recitation as to the medical condition . . . which would . . . justify [the] dispensing'' and the avoidance of liability under 21 CFR 1306.04. Gov. Exceptions at 1–2. The Government further argued that Respondent's owner ''had months . . . to prepare a self-serving testimonial defense by acquiring and reviewing medical records after [the] presentation of the Government's case,'' and that Respondent did not have access to these records ''at the time the prescriptions were presented.'' *Id.* at 2. The Government thus contended that ''by accepting'' the testimony of Respondent's owner, ''the ALJ effectively negated the expert testimony of the two health care professionals who testified on behalf of the Government.'' *Id.* The Government also argued that Respondent's lack of accountability in its handling of controlled substances warranted the revocation of its registration.[1] *Id.*

Thereafter, the record was forwarded to me for final agency action. In her decision, the ALJ decision found that Respondent had ''last renewed [its] registration on January 3, 2000, and [that] the registration was due to expire on January 31, 2003.'' ALJ at 3. Under DEA precedent, ''[i]f a registrant has not submitted a timely renewal application prior to the expiration date, then the registration number expires and there is nothing to revoke.'' *Ronald J. Riegel,* 63 FR 67132, 67133 (1998). Because ''it appear[ed] that Respondent's registration had expired before the . . . proceeding was even initiated,'' the case was remanded to the ALJ to determine whether Respondent had submitted a timely renewal application in accordance with DEA's regulations and the Administrative Procedure Act (APA). *See* Order Remanding for Further Proceedings at 1–2; *see also* 5 U.S.C. 558(c) (''[w]hen [a] licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency'').

Thereafter, the ALJ conducted further proceedings in accordance with my remand order. Those proceedings determined that Respondent had submitted a renewal application prior to the January 31, 2003 expiration of its registration and had paid the appropriate fee. However, Respondent's owner was told that its registration had not been renewed pending ''administrative review.'' Affidavit of Jeffrey Street at 1. According to the Government, Respondent's registration was renewed, but ''for unknown reasons,'' the Agency's Registrant Information Consolidated System ''did not record the renewal timely submitted for the 2003–2006 period,'' Gov. Resp. to the Registration Issue on Remand at 2, and ''did not advance the expiration date from January 31, 2003 to January 31, 2006.'' Affidavit of Richard Boyd, Chief of Registration and Program Support Section, at 1. Apparently, the new registration which was issued to Respondent in January 2003, simply used the same January 31, 2003 expiration date of the previous registration. *See id.*

I therefore find that in January 2003, Respondent made a timely and sufficient application for a new registration. I further hold that because the registration which the Agency issued in January 2003 did not extend the expiration date of the registration, but rather, only re-instituted the January 31, 2003 expiration date of the existing registration, the Agency did not make a final determination on the application and Respondent therefore has maintained a valid registration throughout these proceedings.[2] *See* 5 U.S.C. 558(c). Accordingly, there is jurisdiction to determine whether Respondent's registration should be revoked and its pending application should be denied.

Having considered the record as a whole including the ALJ's recommended decision, I hereby issue this Decision and Final Order. As explained below, I adopt in part and reject in part the ALJ's findings of fact and conclusions of law. More specifically, while the ALJ rejected the entirety of the Government's allegations that Respondent dispensed controlled substances to numerous patients in violation of its corresponding responsibility under federal law, as ultimate factfinder, I conclude that the Government has proved by a preponderance of the evidence that Respondent unlawfully dispensed controlled substances to numerous persons. I also conclude that Respondent violated federal law and DEA regulations by failing to maintain complete and accurate records. Based on my findings and Respondent's (and its owner's) failure to acknowledge their misconduct, I concluded that revocation of its registration is necessary to protect the public interest. I make the following findings.

Findings of Fact

Respondent is a pharmacy which is located in Jonesborough, Tennessee. Respondent has been registered as a retail pharmacy since February 1994, and as found above, currently holds DEA Certificate of Registration, BM3913781, which remains valid pending the issuance of this Final Order. *See* Gov. Ex. 1. Respondent is owned by Mr. Jeffrey Street, who has been a licensed pharmacist since 1984. Tr. May 24, 2005 at 75.[3]

The Investigation of Respondent

Sometime in 1995, DEA investigators received information from the Tennessee Bureau of Investigation and the First Judicial District Drug Task Force that Dr. Royce Blackmon, a Butler, Tennessee based physician, was writing prescriptions for drugs containing hydrocodone, a schedule III controlled substance, *see* 21 CFR 1308.13(e), and for Dilaudid (hydromorphone), a schedule II controlled substance, *id.* 1308.12(b), without a legitimate medical purpose. Tr. 22. As part of the investigation, DEA investigators interviewed some of Dr. Blackmon's ''patients'' and determined that Blackmon would frequently write prescriptions ''without even seeing the patient.'' *Id.* at 24.[4] Dr. Blackmon's staff would then tell the ''patients'' to bring the prescriptions to Respondent for filling. *Id.* Moreover, the investigation determined that both Dr. Blackmon's

[1] I also note Respondent's response to the Government's exceptions and have considered the arguments raised therein.

[2] The Government contends that Respondent's ''registration actually expired on January 31, 2006,'' and that ''Respondent was obligated to continue to file renewal applications during the duration of the show cause process.'' Gov. Resp. to the Registration Issue (ALJ Ex. 14) at 2. While I reject the Government's contention, even if Respondent's registration had, in fact, been renewed with a new expiration date of January 31, 2006, there is no evidence that the Agency ever notified it of this fact. Respondent cannot be faulted for failing to file an application to renew a registration when the Government never informed it of the new expiration date.

[3] All citations to the transcript which do not include a date refer to the testimony taken on July 27–29, 2004.

[4] DEA investigators were, however, unable to obtain Blackmon's medical records. Tr. 56.

wife and his daughter were drug addicts, that Dr. Blackmon prescribed both Dilaudid and hydrocodone drugs for his daughter, and that Mr. Street filled some of the daughter's prescriptions. *Id.* at 53 & 86.

As part of the investigation, DEA conducted a prescription review of approximately 15 to 20 pharmacies including Respondent, which were located in the areas of Johnson City, Bristol, Kingsport and Jonesborough. *Id.* at 26. In either November or December 1995, DEA investigators visited Respondent and found that it had dispensed approximately 950 prescriptions which had been issued by Dr. Blackmon. *Id.* at 27; *see also id.* at 181. Most of the other area pharmacies had stopped filling Blackmon's prescriptions, *id.* at 26, but some continued to do so. May 24, 2005 Tr. at 9–10.

In October 1997, DEA investigators returned to Respondent to determine whether Respondent had continued to fill Blackmon's prescriptions since the previous visit. Tr. at 182. The investigators found that Respondent had filled more than 3,000 of Blackmon's prescriptions, all of which were for controlled substances. *Id.* at 183.

Mr. Richards, a private investigator retained by Respondent, testified, however, that he had interviewed Mr. James Backers, a pharmacist who had worked as a relief pharmacist for Respondent during the last three months of 1996, as well as in 1997 and 1998. May 24, 2005 Tr. at 69. According to Mr. Richards, Mr. Backers told him that ''because he had heard rumors that some . . . drugstores weren't filling Dr. Blackmon's prescriptions anymore'' he visited Blackmon at his office. *Id.* at 11. Mr. Richards testified that Mr. Backers stated that Blackmon ''was very nice to him, showed him his records, showed him that he was making referrals to specialists, [and] doing tests.'' *Id.* Moreover, Dr. Blackmon ''was writing not only pain medication, but other maintenance drugs, as well.'' *Id.* Mr. Backers told Mr. Street about his visit. *Id.* He also continued to fill Blackmon's prescriptions although he would call his office if one did not ''look right.'' Id.[5]

The Audits

In March 1998, a DI returned to Respondent with the intention of auditing its handling of controlled substances and presented an Administrative Inspection Warrant to Mr. Street. Tr. at 185–87. The DI asked Mr. Street to provide the pharmacy's purchase, dispensing and distribution records,[6] *id.* at 187–88; these are records which a pharmacy is required under regulation to maintain for two years. *Id.* at 189. Mr. Street assisted in conducting a closing inventory and provided the pharmacy's invoices for the drugs being audited. Because preparing the drug usage reports required accessing data in Respondent's computer and Mr. Street was to teach a class that night, Mr. Street printed out only two drug usage reports (one for Dilaudid and one for Lortab 5) and requested that he be allowed to print out the remaining reports in the morning. Tr. 192; May 5, 2005 Tr. at 117.[7] When the DI arrived at the pharmacy the next morning, Mr. Street reported that ''his computer had crashed and he'd lost all [of] his prescription data.'' Tr. 192. Mr. Street further told the DI that his computer's hard drive had failed. May 24, 2005 Tr. at 121.

According to Mr. Street, several days later the DI returned to the pharmacy with the backup tape. Upon loading the tape into the computer, there were no records on it. Respondent then loaded another backup tape, which he had last used in either October or November and the tape loaded up right away. *Id.* at 122. Because several months of records were missing, the DI determined that an audit could not be conducted. Tr. 193. The ALJ specifically credited the DI's testimony that while he had inspected fifty to seventy-five pharmacies, this was the only time a pharmacy had been unable to produce the required records. ALJ at 10 (citing Tr. 194).

In December 1999, the DI obtained another administrative warrant and returned to Respondent to conduct an audit.[8] GX 6, Tr. 195. Mr. Street provided the DI with a copy of Respondent's biennial inventory which had been taken on January 11, 1999. GX 5. According to Mr. Street, under the rules of the Tennessee Board of Pharmacy, a pharmacist is allowed to estimate the number of pills in an open bottle in conducting an inventory of schedule III through V controlled substances. May 24, 2005 Tr. 149.

Another DI and a state investigator conducted a closing inventory of Respondent's controlled substances. Tr. 198. Mr. Street signed the closing inventory thereby attesting to its accuracy. *Id.* at 199. According to the DI, the audit ''look[ed] . . . at all the records of purchase, all records of distribution'' including the prescription records, as well as various DEA forms for reporting theft, loss and destruction of controlled substances, and other forms that document the movement of controlled substances between the beginning and end dates of the audit. *Id.* at 201. For each audited drug, the DI added up the amount of Respondent's purchases during the audit period and added them to the opening inventory; the DI then added the total amount of each drug dispensed (and or distributed) to the ending inventory and compared the two figures. *Id.*

While the two numbers should equal each other, the DEA audit found that there were both numerous shortages and overages. GX 8. Some of the discrepancies involved substantial quantities in absolute terms. The ALJ found credible Mr. Street's testimony that the Government's audit contained eleven errors because four drug usages reports had been left out,[9] that one of

[5] It is questionable whether Mr. Backers' hearsay statements are reliable because Mr. Richards obtained them in anticipation of this litigation. I assume without deciding that the statements meet the APA's standard that evidence must be ''reliable'' and ''substantial,'' 5 U.S.C. 556(d), because I conclude that the appropriate analysis of whether Respondent dispensed controlled substances in violation of federal law should focus on the actual prescriptions it filled.

[6] Under DEA regulations, a pharmacy is required to maintain records for a minimum of two years and the records must document the purchase and receipt, dispensing, and distribution through destruction, loss, theft or a transfer between registrants of controlled substances. Tr. 190–91; *see also* 21 CFR 1304.22(c). Moreover, records pertaining to schedule II controlled substances must be ''maintained separately from all other records of the pharmacy,'' with the prescriptions ''maintained in a separate prescription file.'' 21 CFR 1304.04(h)(1). With respect to schedule III through V controlled substances, a pharmacy's records must be ''maintained separately from all other records of the pharmacy or in such form that the information required is readily retrievable from [the] ordinary business records of the pharmacy'' with prescription records ''maintained either in a separate prescription file for controlled substances in Schedules III, IV, and V only or in such form that they are readily retrievable from the other records of the pharmacy.'' *See also* 21 CFR 1304; Tr. 193.

[7] There is conflicting evidence as to when the DI obtained Respondent's backup tape. The DI testified that Mr. Street gave him the backup tape (which was stored in his files and not the pharmacy's computer) before leaving on the day that he showed up to conduct the audit. Tr. 192. Mr. Street testified that upon the DI's arrival the next morning, he assured the DI that ''everything's going to be okay because I've got a good backup tape,'' to which the DI responded ''Show it to me.'' May 24, 2005 Tr. at 121. According to Mr. Street, he then pulled the tape out of the computer's ''external drive'' and the DI took possession of it. *Id.* at 121.

I also note that Mr. Street testified that he ran a backup tape ''every night.'' May 24, 2005 Tr. at 120. Mr. Street did not testify that the backup tapes were re-used, and given the absence of such testimony, it is perplexing that Mr. Street did not have a more current backup tape available. The ALJ did not, however, reconcile her findings with this testimony.

[8] The DI was accompanied by another DI and an investigator from the Tennessee Board. Tr. 198.

[9] In his testimony, Mr. Street did not specifically identify which drug usage reports had been left out.

the five diazepam drug usage reports provided to DEA overlapped with another report resulting in an overage of 30,000 tablets of diazepam,[10] that the DI had used ''some inaccurate beginning counts . . . off of our inventory,'' and that the DI had failed to include drugs Respondent had reported stolen. May 24, 2005 Tr. 125.[11]

There is, however, no dispute that Respondent was short 800 tablets of hydrocodone/acetaminophen [12] (5/500) and more than 380 tablets of Lortab (7.5/500), a brand name drug which also contains hydrocodone and acetaminophen. *Compare* ALJ Attachments A and B. Respondent was also short 200 tablets of Dilaudid (hydromorphone) 4 mg. and 193 tablets of generic hydromorphone 4 mg. *Id.* Respondent was also short 485 tablets of acetaminophen/codeine (300/60). *Id.*

Furthermore, according to Respondent's audit, the pharmacy was short 589 tablets of hydrocodone/apap (7.5/500) and 704 tablets of Diazepam 10 mg. *Id.* at Attachment B. Moreover, Respondent's audit found substantial overages in multiple drugs include hydrocodone/apap 7.5/750 (740 tablets), hydrocodone/apap 10/650 (438 tablets), Lortab 5/500 (189 tablets), and apap/codeine 300/30 (369 tablets). *Id.* While it is not uncommon that a pharmacy will have small shortages or overages (of less than fifty dosage units), Tr. 72–73, the shortages and overages found during the 1999 audit are not trifling amounts.

On April 10, 2001, DEA investigators returned to Respondent to conduct another audit. For the closing counts, the DIs took an inventory of the drugs being audited which Mr. Street verified. GX 10. For most of the drugs being audited, the DIs used the inventory taken during the December 14, 1999 audit for the beginning counts.[13] Here again, the Government found several substantial shortages of hydrocodone/apap drugs and numerous overages. *See* GX 11.

Mr. Street also disputed the accuracy of this audit and testified that he found that it had eight errors. May 24, 2005 Tr 128. More specifically, Mr. Street testified that the several drug usage reports and purchase invoices were left out. *Id.* He also asserted that the diazepam was again over-accounted for. *Id.*

Mr. Street again conducted his own audit and found that Respondent had substantial shortages in numerous drugs. *See* ALJ 15, Resp. Ex. 3. With respect to generic hydrocodone/apap drugs, Respondent was short 171 tablets of 5/500 strength, 656 tablets of 7.5/500, and 657 tablets of 10/500; Respondent was also short 196 tablets of Lortab 10. Resp. Ex. 3. As for diazepam, Respondent was short 312 tablets of 5 mg. strength and 554 tablets of 10 mg. strength. *See id.* Respondent was also short 152 tablets of methadone 40 mg. (a schedule II drug, 21 CFR 1308.12(c)), and 166 tablets of acetaminophen and codeine #4. *See* Resp. Ex. 3 at 2.

On April 30, 2002, the DIs returned to Respondent and conducted an audit which covered the period between the April 10, 2001 and the date of their visit. GX 13. The DIs used the closing inventory counts from the 2001 audit for the beginning count and took an inventory of the drugs on hand for the closing count, which Mr. Street verified. *See id.*

Even though the DIs audited only twelve drugs, they again found several substantial shortages and overages, *see* GX 14, and Mr. Street disputed the accuracy of the audit. May 24, 2005 Tr. at 129 & 137. More specifically, Mr. Street testified that the DEA audit did not include three drug usage reports and that apparently, the amounts from some invoices were not properly counted. *Id.* at 129.

Once again, Mr. Street's audit found substantial shortages and overages. See Resp. Ex. 4. Specifically, Respondent was short 498 tablets of diazepam 10mg., 754 tablets of hydrocodone/apap 7.5/500, and 910 tablets of hydrocodone/apap 10/500. Resp. Ex. 4. Respondent also had overages of 442 units of hydrocodone/apap 7.5/650 and 364 units of hydrocodone/apap 10/650.

With respect to the 2001 audit, the ALJ found that Mr. Street ''credibly stated that he attributed such discrepancies to human error.'' ALJ 15. More specifically, Mr. Street testified that ''it could have been simply [that] the person was supposed to have gotten the generic and we accidentally pulled the name brand off the shelf.'' May 24, 2005 Tr. at 142–43. Mr. Street further testified that there were ''four different'' strengths of combination hydrocodone drugs ''all on the shelf together[,] and it could have been just simply the fact that we just pulled the wrong one off the shelf.'' *Id.* at 143. The ALJ also credited Mr. Street's testimony that ''there was no deliberate diversion of drugs.'' ALJ at 15 (May 24, 2005 Tr. at 143).

As for Mr. Street's contention that his pharmacy may have confused branded and generic drugs when it filled prescriptions, it would have been easy enough to prove this by showing the existence of corresponding overages and shortages in the respective drugs. Mr. Street did not, however, offer any evidence from his own audits to this effect.[14]

Mr. Street's contention that he and other pharmacy personnel may have mistakenly filled a prescription with a drug of a different strength than that prescribed by his customers' physicians is alarming. Under federal regulations, drug manufacturers and distributors are required to label the containers that they use to distribute their drugs. 21 CFR Pt. 201. Manufacturers are also required to imprint each dosage unit ''with a code imprint that, in conjunction with the product's size, shape and color, permits the unique identification of the drug product and the manufacturer * * * of the product.'' 21 CFR 206.10(a). Moreover, ''[i]dentification of the drug product requires identification of its active ingredients and its dosage strength.'' *Id.* In short, a pharmacist should know the strength of a drug he is dispensing based on both the container's labeling and the imprint on the dosage unit and make sure that he has dispensed the correct strength of a drug. Indeed, dispensing controlled substances of the wrong strength can have serious consequences for the health of patients.

As for Mr. Street's testimony that ''there was no deliberate diversion'' of the drugs his pharmacy was short of, this is pure speculation. Respondent offered no evidence that it had

Respondent also did not submit the DEA–106s into evidence.

To make clear for future cases, to successfully challenge an audit, a registrant must specifically identify the error which it claims was made. For example, if it claims that the Government left out a drug usage report, it must specifically identify the report and show how its exclusion affected the results. The generalized testimony which Mr. Street typically gave is wholly insufficient to demonstrate that the audit results were erroneous. I conclude, however, that there is no need for a remand on this issue because even Mr. Street's audits found numerous discrepancies.

[10] As discussed below, it is a registrant's responsibility to maintain accurate records. The fact that the audit may have showed an overage of diazepam because the dispensings were recorded on multiple drug usage reports is therefore further evidence of Respondent's poor recordkeeping practices.

[11] At the hearing, the DI acknowledged that he erred when he recorded the beginning inventory figure for hydrocodone/acetaminophen 10/650 from Respondent's January 11, 1999 inventory onto his spreadsheet. More specifically, the DI wrote that the pharmacy had on hand 330 tablets rather than 33. Tr. 219.

[12] Through out this decision, the term ''apap'' is used as an abbreviation for acetaminophen.

[13] For several schedule II drugs (Oxycontin and Methadone) which had not been previously audited, the DIs used for the beginning count the inventory which Respondent took on May 10, 2000. GX 11.

[14] For example, even if DEA did not audit a branded drug of the same strength as a generic drug that it audited, Mr. Street could have done so.

investigated its employees to determine whether any of them could be diverting the missing drugs. In short, Mr. Street does not know whether or not his pharmacy's employees could have been diverting drugs.

Respondent also introduced into evidence the affidavit of Mr. Timothy Mitchell Pierce, a lawyer and registered pharmacist. Resp. Ex. 6. Mr. Pierce reviewed various documents in the case, medical records, and interviewed Mr. Street. Mr. Pierce, who was presumably testifying as an expert, opined that ''the alleged overages and shortages of controlled substances as described in the Order to Show Cause are not due to deliberate diversion,'' and ''are more likely due to DEA audit errors, acceptable human error by [Respondent's] personnel and theft by person(s) not associated with'' Respondent. *Id.* at 4.

I reject the conclusions of Mr. Pierce for several reasons. First, while Mr. Pierce has been a registered pharmacist and stated that he has practiced in retail pharmacy settings, his affidavit does not establish how many years of actual pharmacy practice he has, that he has remained active in pharmacy practice,[15] and that he has any experience in conducting audits.

Second, Mr. Pierce's affidavit typically did not address the shortages which Mr. Street's own audits found. For example, in discussing the December 1999 audit, Mr. Pierce discussed only the shortage of one drug (hydrocodone/apap 7.5/500). RX 6, at 4–5. Mr. Pierce's affidavit ignores that Respondent was short 800 tablets of hydrocodone/apap 5/500, 380 tablets of Lortab (7.5/500), 200 tablets of Dilaudid 4 mg., 193 tablets of generic hydromorphone 4 mg., 485 tablets of acetaminophen/codeine (300/60), and 704 tablets of diazepam 10 mg. *See id.* Similarly, with respect to the April 2001 audits, Mr. Pierce's affidavit ignores the shortages of 312 tablets of diazepam 5 mg. and 554 tablets of diazepam 10 mg. *See id.* at 5–6. The affidavit also offers nothing but speculation regarding the shortages of hydrocodone/apap.[16]

Finally, with respect to the April 2002 audits, Mr. Pierce's affidavit does not even acknowledge the figures for the hydrocodone shortages per Mr. Street's own audit (754 tablets of hydrocodone/apap 7.5/500 and 910 tablets of hydrocodone/apap 10/500). *See id.* at 8. Mr. Pierce then opined that the shortages and overages ''were probably due'' to ''inadvertently'' dispensing the wrong strength of drug. *Id.* Mr. Pierce also opined that a name brand drug could have been ''dispensed for a generic brand drug or vice versa,'' and noted that ''[t]he name brand drugs were not audited and thus cannot be compared.'' *Id.* Again, Mr. Pierce's opinion amounts to pure speculation. His testimony is therefore rejected.

The Evidence Regarding Respondent's Dispensings

The ALJ found that during 1997, Respondent ''filled over 124 controlled substance prescriptions written by Edmond Watts,'' a veterinarian who had allowed both his DEA registration and state veterinary license to expire without renewing them, ALJ at 17 (citing Tr. 37–38, 41–42), and was therefore without authority to prescribe controlled substances. According to the credited testimony of a DEA supervisory diversion investigator, a pharmacist is required to periodically check with the appropriate state licensing authority to ensure that a practitioner holds a current license. *Id.* (citing Tr. 61).

Normally, veterinarians purchase the controlled substances they dispense directly from wholesale distributors and dispense the drugs directly to the owner of the animal. Tr. 88. Indeed, under DEA regulations, ''[a] prescription may not be issued in order for an individual practitioner to obtain controlled substances for supplying the individual practitioner for the purpose of general dispensing to patients.'' 21 CFR 1306.04(b).

Watts wrote the prescriptions, which were for drugs containing hydrocodone, in the names of fictitious patients,[17] Tr. 40, and had his brother present them to Respondent for filling. *Id.* at 62–63. Moreover, Watts' brother was presenting the prescriptions ''almost every day [or] every other day.'' *Id.* at 62. The drugs were then personally used by Veterinarian Watts. *Id.* at 40. Eventually, Watts was convicted of a controlled-substances related felony. *Id.* at 42.

With respect to the prescriptions issued by Watts, Respondent put on the testimony of Mr. Richards, a private investigator it had retained. Mr. Richards testified that Watts told him that he had ''deceived'' Street, and ''didn't tell him [Street]'' about his licensure status. May 24, 2005 Tr. at 14. There is, however, no evidence that Mr. Street had asked Watts whether he had a valid DEA registration and state license prior to the incident in summer of 1997 when state investigators showed up at Respondent and inquired about Watts' prescriptions. *Id.*

Moreover, Mr. Richards testified that ''all of the prescriptions that Dr. Watts wrote that Jeff filled for any kind of pain drugs contained acetaminophen. And that would alert a pharmacist to the fact that it was probably for an animal, because acetaminophen is toxic to certain animals.'' *Id.* at 16. Contrary to Mr. Richard's testimony, the fact that ''acetaminophen is toxic to certain animals'' points to the exact opposite conclusion—that the drugs were not being prescribed to treat animals for a ''legitimate medical purpose'' and that Watts was not acting in the ''usual course of his professional practice.'' 21 CFR 1306.04(a).

DEA investigators also found that Respondent was filling large amounts of prescriptions for schedule III drugs containing hydrocodone that were written by a dentist, J. Michael Haws. ALJ at 19 (citing Tr. 34–35, GX 15I). According to a DEA diversion group supervisor, Dr. Haws ''was prescribing to almost all of his patients, and even though the amounts weren't that large, the frequency was. [The patients] were going to him almost every other day and requiring additional prescriptions.'' Tr. 35. Ultimately, the state dental board placed Dr. Haws on probation for three years, and following the issuance of an Order to Show Cause, Haws voluntarily agreed to restrictions on his DEA registration. *Id.* at 37.

On cross-examination, the DEA investigator acknowledged that Haws did a lot of extractions and that it would not be unusual for a dentist to prescribe pain medication after doing this procedure. *Id.* at 59. However, on re-direct examination, the investigator testified that in his experience, dentists who performed extractions treat acute pain which ''lasts for a short period of time'' and that dentists do not ''normally'' treat chronic pain. *Id.* at 87–88. The investigator further explained that the frequency of the prescriptions issued by Haws and filled by Respondent was not consistent with the treatment of acute pain, but rather, with the treatment of chronic pain. *Id.* at 87–88.

DEA investigators also determined that Respondent was filling a large number of prescriptions issued by Dr. Frank Varney for benzodiazepines (such as Valium or diazepam), which are

[15] Indeed, it appears that Mr. Pierce has not practiced as a pharmacist in a substantial time because he graduated from a Tennessee law school in 1992, is licensed as a lawyer in Tennessee, but holds a Louisiana pharmacy license.

[16] With respect to the April 2002 audits and the diazepam shortages, Mr. Pierce's affidavit responds to the allegations of the Show Cause Order. The Show Cause Order, however, only sets the parameters of the proceeding and does not constitute evidence.

[17] Watts also wrote prescriptions ''in the name of his sister-in-law.'' Tr. 41. Watt's sister-in-law ''was interviewed and indicated [that] she never received that medication.'' *Id.*

schedule IV controlled substances. Tr. 28, 31–33, *see* 21 CFR 1308.14(c)). According to the supervisory investigator, in 1994, the state board put Dr. Varney on probation and required that he attend a course on prescribing controlled substances. Tr. 33. Before the state board action, Dr. Varney was writing prescriptions for schedule II narcotic prescriptions; after the board action, he turned to writing the benzodiazepine prescriptions. *Id.* at 33–34. Respondent filled ''over 7000'' prescriptions written by Dr. Varney, most of which were for benzodiazepines. *Id.*[18]

The Prescription Traces

The Government introduced into evidence prescriptions traces for twenty-five customers of Respondent. *See* Gov. Ex. 15 (A–Y). For each customer, the traces indicated the name and strength of the controlled substance, the quantity dispensed, the prescription number, the date of the original prescription, and the name of the prescribing practitioners. The Government also put on two expert witnesses, Dr. John Mulder, a physician with a specialty in family practice who is board certified in hospice and palliative medicine, GX 16, and Dr. James Ferrell, a pharmacist with forty-one years of experience and the former director of the Tennessee State Board of Pharmacy. Tr. 271, GX 17.

With respect to several of the traces, either one or both of the Government's experts testified that Respondent's dispensings were not improper. With respect to Customer M.B. (GX 15–A), Dr. Mulder opined that his review found ''no significant deviation from what could be expected to be a standard of care for prescribing these medications. In other words, the quantities over a period of time could be consistent with an acceptable medical reason.'' Tr. 499.

With respect to patient D.C. 2 (GX 15–C), Dr. Mulder ''found nothing that would be outside of a legitimate medical reason for the dispensing of these particular amounts and types of medications.'' *Id.* at 507. As for Government Exhibit 15–E, a trace which listed a male (D.E.) and female (J.E.) who used the same address, Dr. Mulder stated that ''[t]he amounts of medicine prescribed began to skirt the upper limit of acceptable, but [they] never actually surpassed it in terms of the number of pills dispensed within a given month.'' *Id.* at 509. Dr. Mulder further explained that ''it is conceivable that someone with a particular pain problem could be dispensed this amount of medication longitudinally, so I did not have a particular problem with this particular chart.'' *Id.* at 509–10.

Dr. Mulder also found that the prescriptions for patient B.R. (GX 15–O) ''could have been . . . for legitimate medical purposes,'' Tr. 528, that Respondent had properly dispensed to patient W.B. (GX 15–P), Tr. 530, and that Respondent ''probably met'' the standard in dispensing to patient R.S. (GX 15–S). Tr. 533. Finally, with respect to patient W.T. (GX 15–W), Dr. Ferrell noted that while ''[t]he dosages are really high . . . [w]hen your patients have cancer and they're dying, we do see . . . dosages of controlled substances [that] are really high.'' Tr. 359. Dr. Ferrell thus concluded that the prescriptions ''could be legitimate.'' *Id.* at 359–60.

The remaining traces did, however, raise substantial questions regarding the legitimacy of the prescriptions Respondent filled. Set forth below is a discussion of the evidence regarding Respondent's dispensings to those patients which the Government's experts concluded (at least initially) did not satisfy the ''corresponding responsibility'' under Federal law.

Patient D.C. 1.

This trace showed that Respondent dispensed to D.C. numerous prescriptions for Lorcet, a branded drug combining hydrocodone and acetaminophen, which were issued by J. Michael Haws, a dentist. *See* GX 15–B, at 1–2. Between June 24, 1997, and September 29, 1997, Respondent filled twenty-nine controlled substance prescriptions for narcotics; twenty-eight of the prescriptions were for hydrocodone and acetaminophen, and one of the prescriptions was for Percodan, a schedule II controlled substance which contains oxycodone and aspirin. *See* 21 CFR 1308.12(b). The prescriptions were typically issued every three to four days. *See* GX 15–B, at 1–2. Furthermore, during both July and August, the controlled substances dispensed by Respondent contained 140,400 mg. of acetaminophen or approximately 4529 mg. per day. Moreover, on July 8, 1997, one day after Respondent filled a prescription for twenty-four Vicodin ES tablets, which was issued by Dentist Haws, it filled a prescription for sixty Lorcet 10/650 tablets issued by another practitioner, Dr. Caudle. *Id.* at 2.

With respect to the prescriptions Dentist Haws issued to D.C., Dr. Ferrell observed: ''that's a lot of times, a lot of dental problems right there. At some point in time, you've got to wonder * * * why he's seeing the dentist so often and why he's having so much dental problems.'' Tr. 289. Dr. Ferrell further explained that dentists usually treat acute pain and that ''after maybe a month or two and I continued to see those things * * * I would ask the dentist to supply me some type of reason for why the prescriptions kept going on for such a long period of time.'' *Id.* at 290.

Relatedly, Dr. Mulder opined ''that the prescriptions over a longitudinal basis for this narcotic in this dose were being prescribed by a dentist who is not a physician which heightens the level of concern about this particular prescription.'' *Id.* at 504. Dr. Mulder also testified that the drugs Respondent dispensed contained acetaminophen, and that there is a ''safe limit'' as to the amount of acetaminophen an individual can take during a day without ''developing a toxic state,'' which is ''four grams a day.'' *Id.* at 500. Dr. Mulder further testified that ''[t]he number of pills dispensed to this individual were above the acceptable limit'' and could lead to serious illness if the patient was actually taking the drugs. *Id.* at 500–01.

In his testimony, Mr. Street acknowledged that the prescriptions ''slightly exceed[ed]'' the safe limit for acetaminophen ''on two separate months.'' May 25, 2005 Tr. at 79. Mr. Street testified that D.C. ''required a lot of dental work,'' and that because he was a patient ''that Dr. Haws [was] treating over a long period of time, we kept in touch with the dentist office. And it was easy to do, because the dentist office is right there in town. And kept in touch with either Dr. Haws or his receptionist * * * Ms. Williams, to verify that they were, you know, requiring ongoing treatment.'' *Id.* The ALJ credited this testimony, *see* ALJ at 35, and many of the prescriptions issued by Dentist Haws appear to have been called in to Respondent.[19] *See* GX 15–B.

[18] Mr. Richards testified that between 1997 to 1999, a competitor pharmacy ''filled 1,886 controlled substance prescriptions for Dr. Varney'' and ''Jonesborough Drug filled 25,861 hard copies during the same period.'' May 24, 2005 Tr. 32. Even if Mr. Richard's testimony regarding the prescriptions filled by Jonesborough Drug was meant to refer to controlled-substance prescriptions, the testimony is not relevant to the issue of whether Respondent filled unlawful prescriptions.

[19] The ALJ also found that ''Mr. Street had counseled [D.C. 1] not to take additional over-the-counter acetaminophen during this time.'' ALJ at 35 (citing Resp. Ex. 1, at 1). Mr. Street did not, however, testify to this under oath and the document which contains this statement was not sworn. It is also notable that Mr. Street and his counsel had approximately ten months from the time the Government rested until the hearing reconvened and thus they had ample time to prepare for his testimony. ALJ at 2. Because Mr.

Continued

None of the prescriptions, however, include a notation that the dispensing pharmacist had questioned Dentist Haws about D.C.'s continuing need for the drugs. *See Id.*

Patient E.C.

Government Exhibit 15–D shows that on several occasions, Respondent dispensed to E.C. prescriptions for combination hydrocodone and acetaminophen products issued by different doctors within a short period of other similar prescriptions. For example, on October 24, 1997, Respondent dispensed a prescription for 20 Lortab 7.5/500 issued by Dr. Hussain; the next day, it dispensed a prescription for 25 hydrocodone/apap 5/500 issued by Dr. Wiles. *See* GX 15–D at 1. Three days later (on October 28), Respondent dispensed another 30 tablets of Lortab 5/500 issued by Dr. Wiles. *Id.* Dr. Ferrell specifically noted that upon receiving such prescriptions, a pharmacist should call the prescriber and ask if he was ''aware that the patient had gotten Lortab the day before.'' Tr. 296.

The trace also showed that Respondent had filled multiple prescriptions for sixty tablets of alprazolam 5 mg. issued by Dr. Hussain, as well as multiple prescriptions for diazepam 5 mg. issued by Dr. Slonaker. GX 15–D. In several instances, Respondent filled the prescriptions only days apart. *See Id.* at 1 (10/26/99 Rx for 60 alprazolam and 10/27/99 Rx for 60 diazepam; 11/20/99 Rx for 60 alprazolam and 11/23/99 Rx for 60 diazepam). *Id.* at 1. Both drugs are schedule IV depressants, *see* 21 CFR 1308.14(c), and according to Dr. Ferrell ''have a synergistic effect'' when taken together. Tr. 297. Dr. Ferrell further noted that the trace showed that the patient was simultaneously receiving multiple controlled substances for pain (from Dr. Slonaker) such as hydrocodone/apap 7.5/500 and hydrocodone/apap 10/500, *Id.* at 298, and that the pharmacy should have questioned this. *Id.* at 300; GX 15–D at 2. Relatedly, Dr. Mulder testified that ''[it] is generally considered not appropriate to be mixing different short-acting analgesic medications at the same time'' such as E.C. was receiving, and that the pharmacist should have contacted the physician. Tr. 508. None of the prescriptions indicated that Respondent had contacted the prescriber. *See* GX 15–D.

Mr. Street testified that ''I'd talk to Dr. Slonaker about this before, because he does this for many of his patients'' and that ''he likes to prescribe a stronger pain med for severe pain, and a weaker pain med * * * for mild to moderate pain.'' May 24, 2005 Tr. 81–82. Mr. Street also testified that E.C. had been a patient since Respondent opened, that he had ''chronic back problems'' and ''has seizures'' related to a fall he had in November 1997. *Id.* at 81. Mr. Street, however, offered no testimony regarding Respondent's frequent (and sometimes nearly simultaneous) dispensings of the alprazolam and diazepam prescriptions which were written by different doctors.

Respondent also introduced into evidence the affidavit of Joseph Montgomery, a physician with thirty years of experience. *See* RX 5. Dr. Montgomery reviewed the medical records of most of the patients identified in the traces. Dr. Montgomery opined that it was ''probably * * * medically justified'' for E.C. ''to receive the degree of pain medications prescribed.'' RX 5, Ex. A. at 2. Dr. Montgomery offered no opinion, however, as to whether the prescriptions Respondent repeatedly filled for alprazolam and diazepam were issued for a legitimate medical purpose. *See Id.*

Patient S.F.

The prescription trace for S.F. shows that beginning in January 1996 and ending in April 1997, Respondent filled approximately 126 prescriptions issued by Dr. Blackmon which were primarily for Dilaudid (schedule II) and Lorcet 10/650 (schedule III). GX 15–F. Dr. Ferrell noted that in 1996, Respondent filled approximately 47 hydrocodone/apap prescriptions for a total of 3,915 dosage units and 35 Dilaudid prescriptions for 3,090 dosage units. Tr. 306. Dr. Ferrell further explained that this amounted to ten tablets a day of hydrocodone and eight tablets a day of Dilaudid, ''which is real heavy usage of * * * the two opioids.'' *Id.* Moreover, in the first three-and-a-half months of 1997, Respondent filled 23 prescriptions totaling 2,070 dosage units of hydrocodone and 16 prescriptions totaling 1,454 dosage units of Dilaudid. *Id.* This amounted to approximately 17 tablets a day of hydrocodone and 12 tablets a day of Dilaudid. *Id.* Dr. Ferrell also noted that Respondent had filled a prescription for Buprenex, a narcotic agonist-antagonist which can cause acute withdrawal symptoms in patients taking Dilaudid, an opioid agonist. *Id.* at 307.

Dr. Ferrell further noted that the Buprenex prescriptions contained no notation that Respondent had contacted the prescriber. *Id.* at 308. Dr. Ferrell added that based upon the dosages being prescribed, S.F. was ''at least physically dependent'' on the opioids and that he would have ''probably refuse[d] to fill his prescriptions.'' *Id.*

Dr. Mulder added that the quantities of dosage units of hydrocodone/acetaminophen drugs ''were twice the acceptable limits'' and ''would be potentially toxic.'' *Id.* at 511. He further testified that a pharmacist has an obligation ''not to dispense medication knowingly harmful to the patient'' and ''to contact the physician to let him know that the prescriptions were exceeding acceptable norms.'' *Id.* Dr. Mulder also noted that Respondent was dispensing ''two different narcotics simultaneously in relatively large quantities.'' *Id.*

The ALJ found credible Mr. Street's testimony that S.F. had ''three major back surgeries'' and had difficulty walking. ALJ 40. The ALJ also found credible Mr. Street's testimony that he ''had to make frequent phone calls about him, because he was always wanting his medications early, or he would * * * bring a prescription in that was * * * too frequent, too close to the other one he brought in.'' May 24, 2005 Tr. 85. Mr. Street maintained, however, that Dr. Blackmon ''was monitoring him closely,'' and that while Dr. Blackmon acknowledged that ''he was giving [S.F.] a high amount of narcotics, he felt [S.F.] needed these just so * * * he could function in every day life.'' *Id.*

The ALJ also found credible Mr. Street's testimony that while he provided early refills of S.F.'s prescription, he never did so without verifying it with Dr. Blackmon and then ''document[ed] the transaction in the computer.'' ALJ at 40 (citing May 24, 2005 Tr. at 85–86). Respondent did not, however, produce any printouts of this documentation (or for any other instance in which he claimed to have contacted a prescriber) and testified on cross-examination that he did not know if the ''specific notes for each specific patient'' could even be printed out. May 24, 2005 Tr. at 154.

As for the filling of the Buprenex, the ALJ credited Mr. Street's testimony that the drug's package insert ''gives no interactions or contraindications to ingestion with hydrocodone.'' ALJ at 40. The ALJ also credited Mr. Street's testimony that ''[t]he only precaution regarding Buprenex and hydrocodone is that the combination may 'increase * * * drowsiness.''' *Id.* at 40–41 (citing May 24, 2005 Tr. 87).

Respondent, however, offered no testimony in response to Dr. Mulder's testimony that Respondent was filling prescriptions for combination hydrocodone/acetaminophen at quantities that exceeded acceptable safe

Street could have testified to this but chose not to, I give no weight to this statement.

limits.[20] Furthermore, I take official notice of the package insert for Buprenex.[21] Under the section captioned ''Use in Narcotic-Dependent Patients,'' the insert states: ''Because of the narcotic antagonist activity of Buprenex, use in the physically dependent individual may result in withdrawal effects.'' *Buprenex Injectable Package Insert,* at 1. I therefore reject the ALJ's finding crediting Mr. Street's testimony on the issue. I further find that at the time Respondent filled the Buprenex prescription, it had filled more than sixty prescriptions issued to S.F. for both Dilaudid (hydromorphone) and combination hydrocodone drugs, both of which are narcotics. *See* GX 15–F, at 1 & 3; *see also* 21 CFR 1300.01(b)(30); *Id.* 1308.12(b)(1); *Id.* 1308.13(e).

Patient B.J.

This trace showed that twenty-one different physicians had prescribed controlled substances to B.J. The prescriptions were for multiple schedule IV benzodiazepines including alprazolam, lorazepam, clonazepam, temazepam, and triazolam; multiple schedule III narcotics including combination hydrocodone/apap, Fiorinal with Codeine,[22] and propoxyphene/apap, some schedule II endocet (oxycodone with acetaminophen), and four prescriptions for Stadol (butorphanol), a schedule IV drug (21 CFR 1308.14(f)), which is a mixed agonist/antagonist but which has opioid antagonist properties. Tr. 548.

The trace showed that Respondent repeatedly filled alprazolam and lorazepam prescriptions which were issued by different physicians for B.J. and that in multiple instances the prescriptions were filled within several days of each other. *See* GX 15–G at 1 (Compare Dr. Greenwood Rx for 60 alprazolam on 5/24/99 with Dr. Varney Rx for 90 lorazepam on 5/25/99; Greenwood Rx for 45 alprazolam on 6/23/99 with Varney Rx for 90 lorazepam on 6/21/99; Greenwood Rx for 60 alprazolam on 10/26/99 with Varney Rx for 90 lorazepam on 11/1/99; Greenwood Rx for 60 alprazolam on 11/30/99 with Varney Rx for 90 lorazepam on 11/29/99).[23] The trace also showed multiple instances in which Respondent filled prescriptions for schedule III narcotics such as generic Fiorinal with Codeine and propoxyphene—which again were issued by different doctors—within a short time of each dispensing. Moreover, the trace showed numerous instances in which Respondent filled prescriptions for hydrocodone/apap issued by six practitioners. *Id.* at 8.

Finally, the trace showed that Respondent filled prescriptions for Stadol on April 19 and 24, 1999, September 30, 1999, and November 6, 1999. *Id.* at 1–2. Respondent, however, was also filling prescriptions for narcotics contemporaneously with its Stadol dispensings. *See Id.*

In his testimony, Dr. Ferrell explained that ''[a] pharmacist is basically the gatekeeper of the medical delivery system.'' Tr. 310. After noting the numerous instances in which Respondent filled prescriptions for different benzodiazepines which were issued by different doctors and the large quantities of these drugs it dispensed, *Id.* at 312, Dr. Ferrell explained that a pharmacist must contact the prescriber, ask him if he is ''familiar with the fact [that] the patient'' is on another drug of the same class, and ask if he really wants the patient to receive the drug. *Id.* at 313. Dr. Ferrell also found problematic Respondent's filling of the prescriptions for hydrocodone/apap which were written by six different practitioners. *Id.* at 315.

Dr. Mulder found problematic Respondent's filling of ''simultaneous prescription[s] of narcotic analgesics'' and noted that ''there were six different narcotics being * * * dispensed simultaneously by a number of different physicians.'' *Id.* at 512–13. Dr. Mulder further found that ''[t]he number of pills dispensed * * * exceeded the acceptable safe limits and would have been toxic to the patient.'' *Id.* at 513.

Dr. Mulder also explained that prescribing an agonist/antagonist such as Stadol ''at the same time that you're giving an agonist * * * precipitate[s] a withdrawal reaction [in] the patients.'' *Id.* Dr. Mulder further explained that Stadol and narcotic agonist drugs ''cannot be given simultaneously and they were given simultaneously in this particular patient.'' *Id.* at 513–514. According to Dr. Mulder, Respondent ''should not have filled'' the Stadol prescriptions. *Id.* at 514. Respondent also should have notified the physician that ''he cannot fill'' the prescription because of the ''potential medical problems'' that can occur ''by dispensing these two medications together'' and also that the ''numbers of pills are too much.'' *Id.*

Finally, with respect to Respondent's dispensing of multiple benzodiazepines, Dr. Mulder opined that ''the patient was receiving as many as three different benzodiazepines as the same time [and] [t]here [is] no medical indication for it whatsoever.'' Tr. 515. Dr. Mulder further explained that ''to dispense'' these prescriptions was ''problematic,'' because ''the combined effect'' of the drugs ''could be devastating for the patient.'' *Id.*

Mr. Street testified that B.J. had ''a lot of medical problems'' including chronic pain, chronic headaches, chronic kidney problems and numerous hospital stays. May 24, 2005 Tr. 87. Mr. Street also testified that B.J. had seen four different primary care physicians because the first two she saw had closed their practices or Tenncare had required her to change doctors. *Id.* at 88. Mr. Street further stated that B.J. ''didn't see [the physicians] at the same time.'' *Id.*

Mr. Street also testified that B.J. ''is a mental health patient,'' and that she went to a mental health group practice which had ''five or six doctors.'' *Id.* Mr. Street maintained that B.J. would not necessarily see the same doctor at each appointment. *Id.*

As for the three different benzodiazepines, Mr. Street testified that Dr. Varney was her primary care physician and was prescribing her one benzodiazepine for tension because she had headaches and another for sleep. *Id.* at 89. Moreover, a physician at the mental health group was prescribing alprazolam to her for anxiety. *Id.* The ALJ further credited Mr. Street's testimony that he had called both Dr. Varney and the mental health group and that ''[t]hey were both aware they were both prescribing at the same time.'' *Id. See also* ALJ at 43. The ALJ also credited Mr. Street's testimony that he documented this in his computer. *Id.* Mr. Street did not, however, testify as to

[20] Neither Mr. Street nor his expert witness, Dr. Montgomery, offered any evidence to refute this testimony. *See* RX 5, at 3–4. Moreover, while Dr. Montgomery stated that ''the records showed that Jeff Street called Dr. Blackmon's office regarding the quantity of pain medicine and Soma that [S.F.] received,'' RX 5, at 5, Dr. Montgomery offered no opinion as to why it was appropriate to dispense either quantities of drugs that are potentially toxic or multiple opiates. *See id.* at 4–5.

[21] In accordance with the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is ''entitled on timely request to an opportunity to show to the contrary.'' 5 U.S.C. § 556(e); *see also* 21 CFR 1316.59(e). To allow Respondent the opportunity to refute the facts of which I take official notice, Respondent may file a motion for reconsideration within fifteen days of service of this order which shall commence with the mailing of the order.

[22] A branded drug containing butalbital, aspirin, caffeine and codeine phosphate.

[23] There were also similar instances on February 9 and 15, 1999; March 6 and 11, 1999; April 27, 29, 30 and May 1, 1999, in which Respondent filled prescriptions for these drugs which were issued by these two doctors for B.J. *See* GX 15–G, at 2. There were also many instances in which the prescriptions were presented within a week to two weeks of each other but were for large quantities.

when he first called the respective physicians.

Moreover, Mr. Street did not address why Respondent, between March and October 1999, repeatedly filled prescriptions for propoxyphene/apap and butalbital with codeine, which were continually issued by Drs. Gastineau and Varney respectively.[24] *See* GX 15–G, at 1–2. Nor did he offer any testimony as to why Respondent filled the four Stadol prescriptions when it was also dispensing narcotics to B.J.[25] Moreover, while Dr. Montgomery's affidavit concluded that B.J. ''is an unfortunate patient who has multiple medical/dental producing pain syndromes which were appropriately treated,'' the affidavit does not address the prescribings of narcotics by Drs. Varney and Gastineau. RX 5, at 11. Nor did it address the medical appropriateness of the simultaneous prescribing of alprazolam and lorazepam by Drs. Greenwood and Varney. *See Id.*

Patient W.L.

The prescriptions for W.L. indicate that between December 21, 1995, and February 15, 1997, Respondent filled 239 controlled substances prescriptions (including refills) issued by Dr. Blackmon for such drugs as Buprenex, Diazepam, Lortab 7.5/500, generic hydrocodone/apap 10/650, and Tussionex Pennkinetic Suspension (hydrocodone with chlorpheniramine) oral solution. *See* GX 15–H. In 1996, Respondent made 163 dispensings of Buprenex totaling 5,380 dosage units for ''approximately 14 units a day,'' thirty-one dispensings of hydrocodone/apap totaling 2550 dosage units, and twenty-two dispensings of diazepam totaling 1530 dosage units. Tr. 317; *see also* GX 15–H, at 1–4.[26]

Dr. Ferrell re-iterated that ''Buprenex is a narcotic antagonist'' and ''has many drug interactions'' including ''respiratory and cardiovascular bouts * * * in patients receiving therapeutic doses of diazepam.'' *Id.* Dr. Ferrell stated that he ''probably would not have filled the prescription.'' *Id.* at 318.

Relatedly, Dr. Mulder testified that Respondent did not comply with its corresponding responsibility under federal law for three reasons. Tr. 515–16. Specifically, Dr. Mulder noted: (1) That ''the number [of] pills dispensed * * * would have been toxic if taken as prescribed''; (2) ''the simultaneous prescription of two or more analgesic medications''; and (3) ''the combination of * * * agonist and the antagonist, agonist medications which are contraindicated to be given together.'' *Id.* at 516. Dr. Mulder concluded that Respondent should have notified the physician that the medications prescribed were contraindicated and that it should not have filled the prescriptions. *Id.*

The ALJ credited Mr. Street's testimony that W.L. was disabled and had chronic back pain. ALJ at 43. (citing May 24, 2005 Tr. at 90). On the issue of the interaction of Buprenex and diazepam, Mr. Street testified that ''the only thing the package insert says about combining the two drugs is that there have been reports of respiratory problems when Diazepam is given with Buprenex.'' May 24, 2005 Tr. at 90. Mr. Street further added that the insert then ''tells the physician to proceed with caution if you're going to administer the two drugs.'' *Id.* The ALJ also credited Mr. Street's testimony that while W.L. was receiving ''a pretty heavy dose of narcotics, * * * we stayed [in] contact with Dr. Blackmon's office; and Dr. Blackmon * * * said he was monitoring him close,'' and needed the high doses ''for his medical condition.'' *Id.* at 90–91; ALJ at 44.

According to the Buprenex package insert (which I have taken official notice of), ''[t]here have been reports of respiratory and cardiovascular collapse in patients who receive therapeutic dose of diazepam and Buprenex,'' and ''[p]articular care should be taken when Buprenex is used in combination with central nervous system depressant drugs.'' Buprenex Package Insert at 1. The package insert further states, however, that ''[p]atients receiving Buprenex in the presence of other narcotic analgesics [and] benzodiazepines * * * may exhibit increased CNS depression. When such combined therapy is contemplated, it is particularly important that the dose of one or both agents be reduced.'' *Id.* (emphasis added).

The prescription traces indicate, however, that Dr. Blackmon's prescriptions did not reduce the dosing of the Buprenex, the diazepam, or the hydrocodone/apap and Tussionex. For example, while in January 1996, Blackmon twice prescribed only thirty Lortab, on February 7, he issued a prescription for sixty Lortab (7.5/500) with one refill, and on February 21, he issued a prescription for ninety hydrocodone/apap (10/650) with two refills. Blackmon proceeded to prescribe ninety Lortab in various strengths with refills until February 1997. *See* GX 15–H, at 1. Moreover, while Blackmon initially prescribed only thirty tablets of diazepam, approximately two weeks later, he issued a prescription for sixty tablets with one refill. *See Id.* Two weeks later, Blackmon issued another prescription for sixty diazepam with one refill. *See Id.* Three weeks later, Blackmon increased the diazepam prescriptions to ninety tablets with one refill, and similar prescriptions were issued on approximately a monthly basis until Blackmon's prescription writing ended. *See Id.*

Moreover, the trace indicates that Blackmon increased the quantity and number of refills of Buprenex notwithstanding that he was also prescribing the other drugs. *See id.* Thus, the evidence indicates that Blackmon did not reduce the dosing of either the Buprenex or the other drugs as called for in the Buprenex warnings but actually increased them.[27] Respondent nonetheless filled the prescriptions.

Patient A.L.

This trace indicated that between August 23, 1997, and January 12, 1998, Respondent filled twenty-four prescriptions for Angela L. (who was married to Rex L., GX 15–J) which were issued by Dentist Haws. Most of the prescriptions were for either Lorcet 10/650 or Lortab 10/500. *See* GX 15–I. Respondent also filled three prescriptions Dentist Haws issued for Tussionex Pennkinetic Suspension, a combination of hydrocodone and chlorpheniramine which is prescribed for cough and upper respiratory symptoms. The original prescription was dated 9/11/97, and the trace indicates that Respondent also dispensed two re-fills. GX 15–I. The trace also showed that Respondent filled other prescriptions for Lortab which were issued by a Dr. Caudle/Caudill.

Based on the stickers that had been attached to the original prescriptions, Dr. Ferrell noted that some of the prescriptions were issued to Rex L. but were apparently dispensed to Angela L. *See id.* at 4; Tr. 320–21. Dr. Ferrell

[24] Dr. Gastineau was also a family and internal medicine practitioner and practiced in Elizabethon, Tennessee; Dr. Varney was not a member of Dr. Gastineau's group and practiced in Jonesborough. *See* GX 15–G, at 38 & 71.

[25] As explained at footnote 19, Respondent submitted an exhibit entitled ''Comparison/Analysis of Patients in Exhibit 15.'' RX 1. With respect to B.J., the documents states that ''MD OK'd Stadol, but not with other meds. Drug literature says can be given with a narcotic, and to use caution when doing so.'' RX 1, at 3. The ALJ did not rely on this statement and the exhibit was not sworn. As stated above, because Mr. Street could have testified to this (and been subject to cross-examination) but did not, I conclude that the statements in this document are entitled to no weight.

[26] Some of the refills may have dispensed in the first week of January of the next year.

[27] Dr. Montgomery's affidavit does not discuss W.L. *See* RX 5.

stated that this should not have occurred. *Id.* at 321. Dr. Mulder testified that the number of pills dispensed would have been ''toxic if taken the way they were prescribed and dispensed.'' *Id.* at 517. He further explained that the pharmacist should have ''[a]dvised the patient as to the * * * problem * * * and notified the physician that an excess amount of pills were prescribed.'' *Id.* at 518.

Mr. Street testified that Angela L. was a typical patient of Dentist Haws because she had a ''low income,'' ''no insurance'' and ''needed a lot of work.'' May 24, 2005, Tr. 91. He also testified that ''as with all his patients that he was treating over a long period of time, we stayed in contact'' with Dr. Haws and ''verified that they were still getting treatment.'' *Id.* The ALJ credited this testimony. ALJ at 45. Mr. Street further testified that while Angela L.'s prescriptions may have exceeded the acetaminophen limits ''slightly,'' this happened in only one month and she was getting ''lots of dental work done.'' May 24, 2005 Tr. 91.

In discussing Respondent's dispensings to Rex L., Mr. Street testified that he had discovered that a ''relief pharmacist'' had filled a prescription for Tussionex, which Mr. Street caught ''when [he] came back to work.'' May 24, 2005, Tr. 93. Mr. Street then testified:

> And I alerted Dr. Haws to the fact that * * * it's not within your usual course of practice to prescribe Tussionex. And so * * * I explained to him why. I said, ''That's—basically, that's not a pain syrup, that's a cough syrup, and that's not within your usual course of practice.'' And after that, he ceased doing that. I've never seen him do it again.

Id. According to the trace for Rex L., Respondent filled or refilled Tussionex prescriptions issued by Dr. Haws on August 1, 4, and 29, 1997. *See* GX 15–J, at 2, 5 & 13.

The trace for Angela L. shows, however, that Respondent filled a Tussionex prescription which Dr. Haws issued on September 11, 1997, after Mr. Street claimed to have called Haws. *See* GX 15–I, at 1. Moreover, Respondent refilled this prescription twice. *See id.* Mr. Street offered no explanation as to why these prescriptions and the refills were also not outside the usual course of Dr. Haws' professional practice. *See* May 24, 2005 Tr. at 91. Nor did he explain why Respondent filled the prescriptions. *See id.*

Patient R.L.

This trace showed that Respondent dispensed numerous prescriptions for diazepam and combination hydrocodone products (primarily Lorcet 10/650) between February 27, 1996, and April 15, 1997. *See* GX 15–J. According to Dr. Ferrell, in 1996, Respondent filled 53 prescriptions (with refills) written by Dr. Blackmon totaling 3,180 dosage units of combination hydrocodone/apap, and twenty-one prescriptions totaling 1,200 dosage units of diazepam. Tr. 323.

Rex L. also received numerous prescriptions from Dentist Haws for combination hydrocodone drugs and the two prescriptions for 720 ml. of Tussionex. Regarding the Tussionex, Dr. Ferrell testified that not only is it ''unusual to see a dentist write for cough syrup,'' but these prescriptions were for a very large quantity and he could not ''think of any reason why a prescription for [720 ml.] of Tussionex'' would be necessary. *Id.* at 324–25. According to Dr. Ferrell, ''the usual dosage'' of Tussionex ''is 5 milliliters every 12 hours,'' so that 720 ml. provides 144 dosage units. *Id.* at 325.[28]

The stickers attached to the actual hard copy prescriptions show that on August 1, 1997, Respondent dispensed to Rex. L. 720 ml. of Tussionex, and that three days later, it dispensed to him an additional 360 ml. GX 15–J, at 13. Furthermore, on August 29, 1997, Respondent dispensed to Rex L. an additional prescription for 720 ml. of Tussionex based on Dr. Haws' authorization. *Id.* at 5. Dr. Ferrell further noted that Dr. Haws' Tussionex prescriptions did not appear to include specific directions as to how the drug should be taken. Tr. 326; *see also* GX 15–J, at 5 & 13.

Regarding Rex L., Dr. Mulder testified that the quantities of pills Respondent dispensed ''could have been toxic if taken as prescribed.'' Tr. 519. Dr. Mulder further noted that there was evidence that Rex L. was ''Doctor Shopping,'' a practice in which drug abusers and prescription drug-dealers ''will go from physician to physician to present the same story to'' each doctor so as to ''amass their quantities of medications.'' *Id.* at 520–21.

According to the trace, on November 10, 14, and 18, 1997, Respondent filled prescriptions which Rex L. obtained from Dentist Haws for 24 Lorcet (10/650). GX 15–J, at 2. Thereafter, on November 22, Respondent filled a prescription Rex L. obtained from Dr. Egidio for another 60 Lorcet. Next, on November 29, Respondent filled a prescription Rex L. obtained from Dr. Caudill for 90 Lortab 10/500; Respondent then refilled this prescription twice. *See id.*

This was followed by a December 5 dispensing of a prescription for 240 ml. of Tussionex issued by Dr. Caudell,[29] dispensings on December 9 and 12 of prescriptions for 20 and 24 Lorcet issued by Dentist Haws, a December 17 dispensing of a prescription for 100 tablets of MS Contin 100 mg. (a schedule II drug containing morphine) issued by Dr. Caudle, and a December 23 dispensing of a prescription for 65 Dilaudid 4 mg. issued by Dr. Egidio. *See id.* These were followed by dispensings of 24 Lorcet tablets on December 31, 1997, and January 5, 1998, pursuant to prescriptions issued by Dentist Haws, followed by a January 9 dispensing of a prescription for 240 ml. of Tussionex issued by Dr. Caudill, and additional prescriptions for Lorcet issued by Dentist Haws. *See id.*

The ALJ found credible Mr. Street's testimony that Rex L. suffered from ''extreme chronic pain'' and that Respondent contacted Dr. Blackmon who informed him that ''he needed this dose for his chronic pain.'' May 24, 2005, Tr. 92; *see also* ALJ at 46. The ALJ also found that Mr. Street was aware that patients may develop a tolerance and require larger doses of pain medication. ALJ at 46.

Regarding the Tussionex, the ALJ found credible Mr. Street's testimony ''that the prescription * * * was filled by a relief pharmacist.'' ALJ at 46 (citing May 24, 2005 Tr. at 93. The ALJ also found credible Mr. Street's testimony that he called Dr. Haws and discussed that the prescriptions ''would not normally be within the usual course of a dentist's practice,'' and ''that, after the phone call, he did not see anymore Tussionex prescriptions issued by Dr. Haws.'' *Id.* (Citing May 24, 2005 at 93). For the reasons stated in the discussion regarding Angela L., I reject the ALJ's credibility finding regarding Mr. Street's phone call.

In his testimony, Mr. Street did not specify which of the three Tussionex prescriptions issued by Dr. Haws for Rex L. were filled by the relief pharmacist. Nor did he testify as to which of these prescriptions prompted his phone call to Haws. *See* May 24, 2005 Tr. 93.

Moreover, Mr. Street offered no testimony responding to Dr. Mulder's opinion that Rex L. was engaged in doctor shopping. More specifically, Mr. Street did not testify at all as to why his pharmacy filled the prescriptions that

[28] Dr. Ferrell testified that if a patient took the usual dosage of five ml. twice a day, 144 dosage units would last 36 days. *Id.* at 326. This appears to be a math error as 144 dosage units, if taken twice a day, should last 72 days.

[29] It is not clear whether this is a misspelling of Dr. Caudill's name.

Rex L. presented from multiple practitioners between November 1997 and January 1998.[30] *See id.* at 92–93.

Patient K.P.

This trace showed that Respondent filled prescriptions K.P. had received from ''some 22 different prescribers.'' [31] Tr. 328. Most of the prescriptions were for combination hydrocodone/acetaminophen in various strengths. *See* GX 15–K. There were, however, also prescriptions for alprazolam, propoxyphene/apap, Tussionex, Fiorinal with Codeine, and phentermine. *See id.*

Dr. Ferrell noted that between April 20, 2001, and April 19, 2002, Respondent dispensed to K.P. 58 prescriptions for combination hydrocodone/apap products totaling 2,355 dosage units. Tr. 328. According to Dr. Ferrell, Respondent ''absolutely should have called'' the prescribers ''on each case.'' *Id.* at 329. Dr. Ferrell opined that K.P. was a ''doctor shopper.'' *Id.* at 330.

Dr. Mulder likewise identified ''the number[] of physicians for whom prescriptions were being filled over a relatively short period of time,'' and that the ''quantity of pills * * * exceeded * * * acceptable limits.'' Tr. 522. Dr. Mulder further testified that Respondent ''[h]ad a responsibility not to fill prescriptions for more pills than what would be considered safe and acceptable'' and to ''notify * * * the physicians that the patient was receiving the same prescription from multiple physicians over the same period of time.'' *Id.* at 522–23.

Regarding K.P., Mr. Street testified that she had complications from neck surgery. May 24, 2005 Tr. at 94. He further testified that ''over the course of time [K.P.] had to see five different primary care physicians'' either because the physician closed his/her practice or Tenncare moved her to a different physician. *Id.* Mr. Street added that K.P. had ''seen neurosurgeons'' and they had ''referred her to a pain management doctor who * * * was writing her pain meds.'' *Id.* Mr. Street further added that ''[t]hey were both aware that they were prescribing them at the same time.'' *Id.* Finally, Mr. Street added that during the April 2001 to April 2002 period, K.P. ''had to see seven emergency room doctors,'' and added that this was ''not surprising, considering * * * she had the two major surgeries [and] all the complications.'' *Id.*

While the ALJ credited this testimony, Mr. Street did not identify the names of the doctors by their practice areas. Nor, other than in his vague testimony that the neurosurgeons (Drs. Wiles and Vaught) and the pain management doctor (Dr. Smyth) were each aware of the other's prescribing, did Mr. Street testify as to his pharmacy having contacted any of the other prescribers, such as the orthopedic surgeons (Drs. Beaver and J. Williams) and the emergency room physicians she was also seeing in the same time frame. Moreover, while Dr. Mongtomery opined that there was medical justification for K.P. to have received ''tremendous amounts of narcotics,'' his affidavit does not address the issue of doctor shopping. RX 5, at 12.

Patient P.P.

The prescription trace indicated that Respondent filled prescriptions for P.P. that were issued by eleven different prescribers. *See* GX 15–L. Dr. Ferrell specifically noted that during February 2002, P.P. obtained prescriptions for hydrocodone/apap from Doctors Goulding, Smyth, Haws and Pelletier for a total of 79 dosage units.[32] Tr. 331. Dr. Ferrell further concluded that ''if [Respondent] was telling the different physicians about [the] history of this patient, [it] probably could have cancelled their prescriptions.'' *Id.* at 332.

There is also evidence that during the fall of 1999, Respondent filled prescriptions for narcotics that were issued in close proximity to other prescriptions for either the same or similar narcotics and that P.P. was engaged in doctor shopping. For example, on October 4, 1999, Respondent dispensed an original prescription for 60 hydrocodone/apap (5/500) that was issued by Dr. Lynch; Respondent dispensed refills of the prescription on both October 15 and 25, 1999. GX 15–L, at 1. On October 18, 1999, Respondent dispensed two prescriptions issued by Dr. Wyche: one for 30 hydrocodone/apap (5/500), and one for 48 propoxyphene/apap. *Id.* Moreover, on November 17, 1999, Respondent dispensed a prescription for 36 propoxyphene/apap issued by Dr. Wyche, and on November 18, Respondent dispensed a prescription for 48 hydrocodone/apap, which was also issued by Dr. Wyche.[33] *Id.*

Dr. Mulder testified that Respondent had not met its corresponding responsibility in its dispensings to P.P. for several reasons. In support of his conclusion, Dr. Mulder cited ''the numbers of prescriptions that were [being] dispensed within each given month, the combination of two or more narcotics at the same time, and [that] multiple physicians [were] writing prescriptions for this patient.'' Tr. 523–24. Dr. Mulder also observed that K.P. (GX 15–K) ''had the same address as'' P.P., and ''there was a very significant amount of narcotics going into this household every day.'' *Id.* at 524. Dr. Mulder further explained that in his experience, it is ''highly unusual that you would have two family members with medical problems that would require the same level of prescribing within each individual month.'' *Id.*

Dr. Mulder also testified that he would have contacted law enforcement officials regarding what ''may be going on in that particular household.'' *Id.* at 525. Finally, Dr. Mulder testified that a pharmacist should not ''fill what is inappropriate from a dosage perspective,'' and that a pharmacist should ''notify the physicians that the patients are receiving multiple prescriptions from multiple physicians for the same thing.'' *Id.* at 524.

Mr. Street testified that P.P. was K.P.'s husband and that he was another ''chronic pain patient.'' May 24, 2005 Tr. at 95–96. Mr. Street further testified that P.P. mainly saw Dr. Tochev, a primary care physician, and Dr. Tanner, who was also in the same group. *Id.* at 96.

Mr. Street added that Dr. Tochev referred P.P. to a pain management group, which started writing prescriptions for pain meds for him. *Id.* Mr. Street then testified that ''we contacted pain management about that, and Dr. Tochev, and neither one * * * [was] aware the other one was prescribing. Well, after we contacted them, pain management cease to write [P P.] any more pain meds.'' *Id.*

Concluding his testimony regarding P.P., Mr. Street stated that ''he had seen ER doctors a couple of times; he had seen a dentist a couple of times.'' *Id.* Mr. Street then explained that ''if you knew the doctors in the area like I do, it shouldn't present a problem.'' *Id.*

Notably, Mr. Street offered no testimony regarding the multiple

[30] Again I note that in Respondent Exhibit 1, there is a notation that ''MDs (Caudill and Egidio) were contacted to make sure both were aware patient was seeing each. Both had agreed to see patient since Caudill was semi-retired.'' RX 1, at 4. As explained previously, I decline to give any weight to this document. I further note that even if Mr. Street contacted both doctors, his statement says nothing about whether he notified each of them as to what drug the other doctor (as well as Dr. Haws) was prescribing.

[31] There actually appear to have been 26 different prescribers. *See* GX 15–K.

[32] The prescriptions were dated between February 14, 2002, and February 25, 2002. GX 15–L, at 2.

[33] On November 5 and 10, 1999, Respondent also dispensed a prescription and refill which Dr. Wyche wrote for 180 ml. of acetaminophen with codeine elixir. GX 15–L, at 1.

prescriptions his pharmacy filled that were issued by Drs. Wyche and Lynch. P.P. saw these doctors two years before he saw Dr. Tochev, the physician who referred P.P. to the pain management specialist.[34] *See* GX 15–L, at 16–17. Moreover, of the doctors who prescribed to P.P. during the period when Dr. Tochev was also treating P.P., only Dr. Smyth's prescriptions indicate a specialty of pain management, and the trace suggests that P.P. saw Dr. Smyth on at least two occasions. *Id.* at 4.

On February 20, 2002, Dr. Smyth wrote P.P. a prescription for 30 hydrocodone/apap (5/500) with one refill. *Id.* at 8. Respondent filled the initial prescription the same day and the refill on March 19, 2002. *Id.* at 2. Moreover, the next day, Respondent also filled a prescription issued by Dr. Haws for 24 hydrocodone/apap 7.5/500. *Id.* This was followed by a February 25, 2002 dispensing of 14 tablets of hydrocodone/apap 5/500 pursuant to a prescription of Dr. Pelletier, and the dispensing of a March 5, 2002 prescription by Dr. Haws for another 40 tablets of hydrocodone/apap 7.5/500. *Id.*

Two days later on March 7, 2002, Respondent filled a prescription for 60 tablets of hydrocodone/apap 7.5/500 which P.P. obtained from Dr. Tochev; on March 25, Respondent refilled the prescription. *Id.* at 2. Thereafter, on March 27, 2002, Dr. Tochev issued another prescription for 60 hydrocodone/apap 7.5/500; Respondent filled the prescription the same day. *Id.*

Finally, on April 2, 2002, Respondent dispensed another prescription for 62 hydrocodone/apap 7.5/500 which was issued by Dr. Smyth, the pain management doctor who according to Mr. Street, had stopped writing prescriptions after being informed that Dr. Tochev was also writing prescriptions for the same drug. *Id.*; May 24, 2005 Tr. 96. Furthermore, Government Exhibit 15–L also contains a copy of a prescription for methadone (a schedule II drug, 21 CFR 1308.12(c)) which Dr. Smyth issued on April 25, 2002; attached to the prescription is the sticker that is created upon the dispensing of a drug which includes the Rx number, name of the drug, the quantity and patient instructions, and price. *See* GX 15–L, at 3–4. I thus find that on April 25, 2002, Respondent also dispensed 62 tablets of methadone to P.P.

In his testimony, Mr. Street did not specify the date that he contacted the pain management doctor and Dr. Tochev regarding the fact that both doctors were writing prescriptions for narcotic pain medications. Perhaps at some point he did. The fact remains, however, that Respondent filled multiple prescriptions for hydrocodone that were being issued by multiple doctors within the same time period.

For example, Respondent refilled a Dr. Smyth issued prescription on March 19, notwithstanding that on March 7, it had filled Dr. Tochev's prescription. On March 25, it refilled Dr. Tochev's prescription even though it had refilled Dr. Smyth's prescriptions six days earlier. Then, two days later, it filled another prescription by Dr. Tochev; less than a week later, it filled another prescription from Dr. Smyth. Finally, Respondent also filled prescriptions issued by Dentist Haws during the same period it was filling the prescriptions from Dr. Smith, Tochev, and two other physicians (Goulding and Pelletier).[35]

Patient S.P.

This trace shows numerous instances in which Respondent filled prescriptions that were issued contemporaneously by multiple providers for either the same or similar drugs. These included narcotic pain medicines such as combination hydrocodone/apap, codeine/apap, and propxyphene/apap, as well as benzodiazepines such as clonazepam and temazepam. GX 15–M, at 1–2.

Dr. Ferrell noted that S.P. has seen multiple physicians (fourteen by his count), and noted various instances in which ''two pain relievers of * * * essentially the same type characteristics'' were prescribed by different doctors a day apart. Tr. at 333 & 335. Dr. Ferrell specifically noted that on February 8, 1999, Respondent filled a prescription for 40 tablets of acetaminophen with codeine # 3 which was issued by Dr. Varney; the next day, Respondent filled a prescription for 30 propoxyphene with acetaminophen which was issued by Dr. Huddleston. Tr. 333. Similarly, on August 13, 1997, Respondent filled a prescription for 30 acetaminophen with codeine # 3 which was issued by Dr. Sykes; the next day, Respondent filled a prescription for 60 propoxyphene with acetaminophen which was issued by Dr. Varney. *Id.* Dr. Mulder likewise noted that Respondent had violated its corresponding responsibility based on its having dispensed excessive quantities of pills, ''two or more narcotics at the same time, and [the] numbers of physicians * * * for whom prescriptions were being filled.'' *Id.* at 526.

The trace also shows that on January 14, 1999, Respondent dispensed 25 tablets of acetaminophen with codeine # 3 issued by Dr. Huddleston; on January 19, it dispensed another 20 tablets of the same drug issued by Dr. Varney. GX 15–M, at 2. On January 21, Respondent then dispensed 60 tablets of hydrocodone/apap 5/500 issued by Dr. Anderson, and on January 25, it dispensed another 25 tablets of acetaminophen with codeine # 3 issued by Dr. Huddleston. *Id.* This was followed by a January 27 dispensing of 30 propoxyphene with acetaminophen, and a January 29 dispensing of acetaminophen with codeine # 3, both of which were authorized by Dr. Varney. *Id.* The trace also shows that in April and May 1999, Respondent filled numerous prescriptions for narcotic pain medicines that were issued by Drs. Varney, Huddleston, and Hudson. *Id.*

Finally, the trace also shows numerous instances in which Respondent dispensed temazepam prescriptions issued by Dr. Varney and, sometimes within a day, dispensed clonazepam prescriptions issued by Dr. Shah. *See id.* at 2. Both of these drugs are benzodiazepines. As Dr. Mulder earlier testified, taking multiple benzodiazepines has synergistic effects and could be devastating to the patient. Tr. 515.

The ALJ found credible Mr. Street's testimony that S.P. had knee surgeries, hip surgeries, rotator cuff surgeries, and a partial amputation of her leg. ALJ at 49 (citing May 24, 2005 Tr. at 96). Mr. Street also testified that while it seemed like she had seen 15 different doctors, five of the doctors practice in the same orthopedic group and three of the doctors practice in the mental health group. May 24, 2005 Tr. at 97. Mr. Street also testified that Dr. Varney was ''her primary care physician'' and that he ''likes to write two different pain meds * * * one for severe pain and one for milder pain.'' *Id.* Mr. Street also stated that Dr. Varney had referred S.P. to the orthopedic group, which ''was prescribing her some more pain meds for acute pain,'' and he had ''stayed in contact with'' the doctors who ''thought it was okay.'' *Id.* at 98.

The Government did not rebut Mr. Street's testimony on these points, and upon reviewing the prescriptions, it appears that some of the doctors were in the same group. Mr. Street, however,

[34] Neither Dr. Wyche nor Dr. Lynch presents him/herself as a pain management specialist. *See* GX15–L, at 16–17. Dr. Wyche's scripts indicate that he has a ''FAMILY PRACTICE,'' and Dr. Lynch's scripts contain no indication of a specialty. *Id.*

[35] Regarding P.P., Dr. Montgomery stated that ''[t]his patient has a tremendous pain syndrome due to documented medical and trauma etiologies. It is my opinion that this patient was appropriately treated and the large numbers of pain medicines were reasonable care.'' RX 5, at 12. Again, Dr. Montgomery's statement does not address whether it was appropriate for Respondent to fill multiple prescriptions from multiple doctors within the same time frame.

offered no testimony regarding Respondent's numerous dispensings of benzodiazepine prescriptions by Dr. Varney (S.P.'s family practitioner), and Dr. Shaw. Moreover, while Dr. Montgomery opined that S.P. was ''a difficult patient who received a lot of multiple narcotics and it was reasonable to treat her in this fashion,'' RX 5, at 12, he offered no opinion as to whether it was reasonable for her to receive multiple benzodiazepines simultaneously.

Patient J.P.

This trace showed that Respondent dispensed multiple narcotic pain medicines including Darvocet (propoxyophene/apap), Lortab (hydrocodone/apap 5/500), Tylenol with codeine # 4, and Stadol spray; benzodiazepines including diazepam and temazepam; Pondimin (fenfluramine, a schedule IV drug, 21 CFR 1308.14(d)); and phentermine, a schedule IV stimulant (21 CFR 1308.14(e)). *See* GX 15–N. Most of the drugs were prescribed by Dr. Varney, although the Lortab was prescribed by Dr. Johnson, who issued fourteen prescriptions of the drug to J.P. throughout 1999. *See id.* Moreover, the trace shows that Dr. Varney would issue as many as four to five prescriptions for different controlled substances at a time. *See id.*

Dr. Ferrell testified that he did not ''understand why a doctor would prescribe two drugs like [Tylenol with Codeine and propoxyphene/apap] at the same time.'' Tr. 336. Dr. Ferrell noted that Darvocet and Tylenol # 3 provide ''about the same in relief of pain.'' *Id.* at 338. Dr. Ferrell also found problematic the prescribing of Stadol at the same time that Darvocet and Tylenol with codeine were being dispensed and noted that this happened repeatedly. *Id.* at 337.

Dr. Mulder testified while ''[t]he actual quantities of pills looked at in an isolated manner were not * * * of that much concern,'' J.P. ''was prescribed seven different addicting medications simultaneously.'' *Id.* at 527. Dr. Mulder further explained that J.P. ''had stimulants and depressants, she had analgesics and anxiolytics and this is a whole host of different sorts of addicting medications.'' *Id.* Continuing, Dr. Mulder added that ''[a]t the very least, it would have warranted a discussion with the physician [to] help me understand what's going on here so I feel comfortable about these ying-yang sorts of things I'm doing with this patient's pharmacologic regime.'' *Id.*

Mr. Street testified that he ''remember[ed] talking to Dr. Varney'' about the five or six different controlled substances he was prescribing. According to Mr. Street's testimony, Varney was prescribing two drugs for pain pills. May 24, 2005 Tr. 98–99. The ALJ found credible Mr. Street's testimony that J.P. weighed 350 to 400 pounds and that Dr. Varney wrote her prescriptions for scheduled diet drugs to treat obesity. ALJ at 50 (citing *id.*). Moreover, Varney also ''prescribed her something for sleep [and a] muscle relaxer.'' May 24, 2005 Tr. 99.

As for the Stadol, Mr. Street acknowledged that it was an agonist-antagonist which might cause ''withdrawal problems.'' *Id.* Mr. Street testified, however, that the warning in the Stadol insert applies only to a person who ''is severely dependent on narcotics.'' *Id.* at 100. Mr. Street further testified that he talked with a physician, who he did not identify, about the use of Stadol and was told its use would not pose a problem unless the patient was ''a street addict.'' *Id.* Mr. Street also testified that he asked this physician about whether it was appropriate to prescribe the drug if a patient was ''getting two or three pain pills a day.'' *Id.* According to Mr. Street, the physician told him that it would not be a problem as long as the drug was used ''on an acute'' or an ''as needed basis,'' and that he instructed the patient not to take their ''pain pill * * * in the same time period.'' *Id.*

The ALJ found this testimony credible and the Government did not rebut it. Mr. Street, however, offered no testimony as to why Respondent also filled the prescriptions for Lortab that were issued by Dr. Johnson during the same period it was also filling the prescriptions issued by Dr. Varney for the three opiates (Stadol, Darvocet and Tylenol 3).[36]

Patient A.S.

This trace showed that between April 25, 2001, and March 12, 2002, Respondent filled prescriptions which A.S. obtained for various strengths of combination hydrocodone/apap products from eight different practitioners. GX 15–Q. Dr. Ferrell specifically noted that there were seventeen different prescriptions totaling 369 dosage units. Tr. 343–44.

Dr. Mulder testified, however, that ''the number of pills were acceptable,'' and that ''[t]he only disturbing thing about this was the use of the number of different physicians for filling these prescriptions.'' *Id.* at 531. Dr. Mulder further testified that, under these circumstances, ''[i]t would have been appropriate for the pharmacist to have notified the multiplicity of physicians that a number of different prescriptions were being received for this narcotic so that they could concentrate that in one place.'' *Id.* Dr. Mulder did not, testify, however, that doing so was required for Mr. Street to comply with his corresponding responsibility given the limited number of pills being dispensed. *See id.*

Moreover, the ALJ found credible Mr. Street's testimony that A.S. had to switch her primary care physician multiple times because a physician closed her practice. ALJ 53. Furthermore, several of the prescriptions were for small amounts and were issued by her dentist and emergency room physicians. *Id.* Mr. Street thus testified that this did not ''throw up any red flags.'' May 24, 2005 Tr. at 104; *see also* ALJ at 53. The Government did not offer any evidence rebutting Mr. Streets' testimony or demonstrate through other evidence that it was implausible.

Patient R.S.

This trace showed that R.S. had received prescriptions from nine different prescribers. *See* GX 15–R, at 1–4. According to the trace, in 1999, Respondent filled thirty one prescriptions for alprazolam, nineteen prescriptions for clonazepam, two prescriptions for diazepam, and one prescription for lorazepam. *See id.* at 1–3.

The alprazolam prescriptions were issued by Drs. Lynch, Wiley, and Niner; the clonazepam prescriptions were written by Dr. Wiley. *See id.* Most significantly, the trace showed that both Drs. Lynch and Wiley were writing alprazolam prescriptions during the same time period. More specifically, Dr. Lynch wrote prescriptions for 100 alprazolam which Respondent filled on January 5, February 11 and 24, March 11 and 15, April 15 and 26, May 13, June 4 and 28, August 11, September 7 and 13, October 4, November 24, and December 6, 1999. *Id.* Dr. Wiley wrote prescriptions for 60 alprazolam which Respondent filled on January 27, February 4 and 22, March 13 and 31, April 6 and 22, May 10 and 29, June 15, July 5 and 22, August 9, and September 3, 1999. *Id.* Dr. Niner also wrote an alprazolam prescription on September 25, 1999. *Id.* at 2.

Dr. Lynch was R.S.'s primary care physician. May 24, 2005 Tr. 105; *see also id.* at 8. Dr. Wiley was a psychiatrist. *Id.* at 26. These physicians

[36] While Dr. Montgomery opined that treating J.P. with narcotics was medically justified, his affidavit does not address whether it was appropriate for multiple physicians to be simultaneously prescribing opiates to her. RX 5, at 12–13.

had offices in different cities and did not practice together.

Respondent also filled numerous prescriptions for combination hydrocodone/apap and oxycodone/apap drugs which were written by Dentist Haws and Dr. Lynch; most of the prescriptions were filled only days apart. *Id.* at 1–2. Specifically, on May 5, 1999, Respondent dispensed a prescription for 60 Lortab 10/500 issued by Dr. Lynch. *Id.* at 1. Moreover, pursuant to prescriptions issued by Dr. Haws, on May 12 and 18, 1999, Respondent dispensed two prescriptions for the schedule II drug Endocet (oxycodone/apap 5/325), and on May 21 and June 8, 1999, it dispensed two prescriptions for Percocet (also oxycodone/apap). *Id.* at 2. Furthermore, on June 1, 1999, Respondent dispensed a prescription issued by Dr. Lynch for 60 Lortab 10/500; on June 12, it refilled the prescription. *Id.*

During February through April 2002, there were again repeated instances in which Respondent dispensed prescriptions for combination hydrocodone/apap products which were issued by Drs. Lynch and Haws only days apart. *Id.* at 4. More specifically, Respondent dispensed prescriptions issued by Dr. Lynch for 60 hydrocodone/apap 10/650 on February 2, 14, and 26, March 7, 16, 21, and 29, and April 5, 9, and 22. *Id.* As for Dr. Haws' prescriptions, Respondent dispensed 24 hydrocodone/apap (typically 10/650) on February 21, March 13 and 14, and April 24 and 26, and prescriptions for 12 hydrocodone/apap on March 18 and April 8. *Id.*

Both Dr. Ferrell and Mulder found Respondent's dispensings of both the benzodiazepine and narcotics to be in violation of Respondent's corresponding responsibility. Tr. 347 & 532. Dr. Ferrell testified that there ''[s]hould have been some coordination between the two prescribers.'' *Id.* at 347. Dr. Mulder noted that the number of pills being dispensed ''exceeded safe, acceptable'' limits and that Respondent should have notified the physicians ''that multiple prescriptions were being written.'' *Id.* at 532.

Mr. Street testified that R.S. had been wounded in a robbery attempt and had ''extreme chronic pain'' in his shoulder and upper back. May 24, 2005 Tr. 104–05. Mr. Street further testified he was seeing both a primary care doctor and was ''a mental health patient.'' *Id.* at 105. Continuing, Mr. Street testified:

> There was a question about similar drugs being prescribed together. That was his mental health doctor that started that. He was prescribing benzodiazepines; namely alprazolam for anxiety and clonazepam for depression. So we called the doctor and he told me the reason he was prescribing those. Now, later on his primary care doctor, Dr. Lynch, started prescribing him alprazolam exclusively for anxiety, but he continued to get the clonazepam from his mental health doctor for the depression.

Id.

As for the multiple narcotic prescriptions, Mr. Street testified that ''Dr. Lynch was prescribing Lortab for his chronic pain * * * due to the gunshot wound he had years ago. And at the same time he started seeing Dr. Haws. And Dr. Haws * * * more or less just pulled all of his teeth and made him a * * * complete partial—complete full plate.'' *Id.* at 105–06. Continuing, Mr. Street testified that ''[w]e made contact with both doctor and dentist to make them aware that both were prescribing.'' *Id.* at 106. According to Mr. Street, Dr. Lynch stated that she was prescribing for chronic pain and ''realize[d] the need for acute pain * * * when he sees Dr. Haws,'' and thus Dr. Lynch approved the prescription as did Dr. Haws. *Id.* The ALJ found Mr. Street's testimony credible.

There is evidence corroborating Mr. Street's testimony that he called Dr. Lynch ''regarding narcotic prescriptions.'' RX 5, at 14 (affidavit of Dr. Montgomery). In his testimony, however, Mr. Street did not explain why for eight months, his pharmacy repeatedly dispensed alprazolam prescriptions that were being issued by both Drs. Lynch and Wiley, many of which were filled only days apart. Relatedly, Dr. Montgomery's affidavit does not address why it would be medically appropriate for two physicians to be simultaneously prescribing alprazolam to a patient.

Patient J.S.

Both Drs. Ferrell and Mulder identified Respondent's simultaneous dispensings of pentazocine/naloxone and acetaminophen with codeine # 3 as problematic because pentazocine/naloxone ''is a narcotic antagonist,'' Tr. 351, and acetaminophen with codeine # 3 is a narcotic agonist. *Id.*; *see also id.* at 534; GX 15–T. Mr. Street testified, however, that the antagonist part of pentazocine/naloxone (naloxone) ''is not active when you take it by mouth or orally.'' May 24, 2005 Tr. 107. The ALJ found this testimony to be credible and the Government offered no evidence to rebut it.

Patient H.T.

This trace showed multiple instances in which Respondent dispensed three different narcotic pain medications either on the same day or within only a couple of days of dispensing the other narcotic drugs. For example, on April 19, 1999, Respondent dispensed 100 acetaminophen with codeine # 3, 100 propoxyphene/apap, and 100 hydrocodone/apap 7.5/500. GX 15–U at 2. This pattern of dispensing was repeated on May 10–12, July 2, August 10, October 6, October 28–29, and November 23. *Id.* at 1–2. Most of the prescriptions were written by a single physician, Dr. Hartsell, although a Dr. Sibley wrote several of the hydrocodone prescriptions. *Id.* In addition, on January 20, 1999, Respondent filled a prescription issued by Dr. Huddleston for 30 hydrocodone/apap 7.5/500; on January 23, it filled a prescription issued by Dr. Hartsell for 100 hydrocodone/apap 5/500; and on January 27, it filled a prescription issued by Dr. Sibley for 50 hydrocodone/apap 7.5/500. *Id.* at 2.

Moreover, between April 10, 2001, and April 5, 2002, Respondent dispensed 23 prescriptions for combination hydrocodone/apap totaling 2,440 tablets. *Id.* at 4. The prescriptions were issued by five different doctors including Drs. Hartsell and Sibley. *Id.*

Dr. Ferrell testified that Respondent did not comply with its corresponding responsibility because it should have closely monitored the patient and communicated with the various prescribers to make them aware of the multiple prescriptions and the large number of dosage units being prescribed. Tr. 353–55. Dr. Mulder testified that Respondent did not comply with its corresponding responsibility because of the ''[l]arge numbers of pills being dispensed on a monthly basis of multiple narcotics,'' and that ''[i]n some cases, three different narcotics [were] being dispensed within a couple of days of one another and this was a repetitive pattern, month after month.'' *Id.* at 535–36. Dr. Mulder also noted that there were ''multiple physicians prescribing these medications.'' *Id.* at 536. Dr. Mulder added that the pharmacy should have ''notif[ied] the physicians that multiple prescriptions were coming in from this patient, not fill unsafe amounts of these medications, [and] notify the patient that it's inappropriate to take [the] medications together.'' *Id.*

Mr. Street testified that H.T. ''had a host of medical conditions'' including ''severe chronic lung problems,'' as well as ''severe chronic pain in the knees, and lower back.'' May 24, 2005 Tr. 108. Mr. Street further testified that H.T. was seeing both Dr. Hartsell, who was her primary care physician, and Dr. Sibley, who was her internal medicine doctor,

and that Dr. May ''practice[d] in the same group'' as Dr. Sibley. *Id.*

Mr. Street added that Dr. Hartsell's prescribing of propoxyphene and Tylenol #3 and Dr. Sibley's simultaneous prescribing of Lortab ''thr[ew] up a red flag.'' *Id.* at 109. Mr. Street then testified to having called both doctors who ''confirmed they were both treating her.'' *Id.* Mr. Street added that both doctors ''were aware they were both giving her meds[,] one for milder pain, one was for more severe pain.'' *Id.* Mr. Street further testified that H.T. also had to see some specialists who wrote her prescriptions for acute pain. *Id.* Finally, Mr. Street testified that he documented his contacts with Drs. Sibley and Hartsell in the computer and that both had ''okayed'' the prescribings. *Id.* The ALJ found Mr. Street's testimony credible and the Government produced no evidence to rebut it.

Patient W.T.

This trace shows that Respondent dispensed prescriptions for W.T. that were written by fifteen different physicians for such drugs as alprazolam, Endocet 325 (a combination of oxycodone and acetaminophen), generic oxycodone with acetaminophen (5/500), various strengths of hydrocodone/apap, and propoxyphene-hcl 65 mg. *See* GX 15–V, at 1–3. The trace also shows that Respondent repeatedly dispensed prescriptions for both propoxyphene and oxycodone throughout the same time period, and that in some instances, did so on the same day. *See id.* at 1. Regarding these prescriptions, Dr. Ferrell testified that ''it's unusual to see a patient who's taking Oxycodone and also taking Propoxyphene.'' Tr. 356–57.

Most significantly, the trace shows that Respondent dispensed two separate prescriptions on a single day, each being for 300 tablets of schedule II drugs containing oxycodone which were issued under the name of Dr. Donovan. *See* GX 15–V, at 1. More specifically, on July 31, 1997, Respondent dispensed to W.T. 300 tablets of oxycodone/apap 5/500 pursuant to prescription number 2003283, and 300 tablets of Endocet 325 pursuant to prescription number 2003284. *See id.* at 1 & 21.

Regarding one of these dispensings, Dr. Ferrell testified that 300 tablets of oxycodone/apap ''is an unusual quantity'' and ''would be more than a month's supply.'' Tr. 357. On this day, however, Respondent dispensed to W.T a total of 600 tablets of drugs containing oxycodone.[37] While Dr. Donovan had previously prescribed both Endocet and generic oxycodone/apap to W.T., the prescriptions had never exceeded 100 tablets and he had never prescribed both drugs at the same time.

Moreover, on August 14, only fourteen days after dispensing 600 tablets of oxycodone, Respondent dispensed another 40 tablets of Endocet 325, and six days later, on August 20, it dispensed another 100 tablets of oxycodone/apap 5/500. *See* GX 15–V, at 21–22. Finally, the trace also shows that Respondent dispensed to W.T. several prescriptions for Endocet 325 that were written by Dr. Haynes during the same period in which it was filling Dr. Donovan's prescriptions for the same drug. *See id.* at 1. Drs. Donovan and Haynes did not practice in the same group. *See id.* at 22.

Dr. Mulder concluded that Respondent violated its corresponding responsibility because of the ''very large quantities of pills being dispensed on a monthly basis.'' Tr. 537. He also noted that there were ''multiple analgesic agents,'' and that there were ''multiple numbers of physician[s] on a monthly basis.'' *Id.*

Regarding W.T., Mr. Street testified that she had ''started off seeing a Dr. Donovan and a Dr. Barbarito, who was in the same group,'' and then ''had to switch to a Dr. Steffner.'' May 24, 2005 Tr. 110. Mr. Street further testified that W.T. had seen ''numerous specialists because of surger[ies] she's had'' on various body parts including her hand, shoulder, and gall bladder. *Id.* Mr. Street added that W.T.'s ''primary care doctor was the one that was prescribing the bulk of her pain meds,'' and that she also had ''chronic abdominal pain.'' *Id.* Mr. Street testified that W.T.'s primary care physician had ''prescribed her a stronger pain med for severe pain, and a weaker pain med for less severe or milder pain.'' *Id.*

Notably, at no time in his testimony did Mr. Street state that either he or any other of Respondent's pharmacists had contacted any of the doctors who prescribed to W.T. to verify the legitimacy of the prescriptions. Mr. Street likewise offered no testimony regarding his pharmacy's dispensing of 600 dosage units of schedule II drugs containing oxycodone on a single day. Nor did he testify as to why Respondent filled prescriptions for drugs containing oxycodone that were issued by Drs. Donovan and Haynes, who did not practice together, within the same timeframe.

Patient B.W.

Respondent dispensed numerous prescriptions issued by Dr. Blackmon for Lortab 7.5/500 and Valium (diazepam) between May 1996 and March 1997, when Dr. Blackmon's prescriptions ended. GX 15–X at 1–3. Also, between February 16 and November 11, 1999, Respondent filled each month prescriptions issued by Dr. Egidio for several controlled substances including Oxycontin 20 mg., Lortab 7.5/500, and alprazolam 0.5 mg. *Id.* at 2. All but the first two Oxycontin prescriptions were for 60 tablets; most of the Lortab prescriptions were for 90 tablets. *Id.* The trace further showed that between April 19, 2001, and April 9, 2002, Respondent dispensed thirteen prescriptions issued by Dr. Egidio for Oxycontin 40 mg. *Id.* at 3. The first five of the prescriptions were for 60 tablets; the remaining eight prescriptions were for 90 tablets. *Id.*

Dr. Ferrell noted that Dr. Blackmon had prescribed 1,621 dosage units of hydrocodone and 1,300 dosage units of diazepam and that both quantities were ''high.'' Tr. 361. He also noted that several of Dr. Egidio's prescriptions for Oxycontin gave ''PRN'' as the direction for taking the drug, *id*; this term means to take as needed. *Id.* Oxycontin is, however, typically taken on a scheduled basis. *Id.* While Dr. Ferrell concluded that Respondent violated its corresponding responsibility in dispensing the prescriptions issued by Dr. Blackmon, he concluded that Respondent's dispensings of Dr. Egidio's prescriptions were not improper even though they contained the erroneous directions for taking the Oxycontin. *Id.* at 362.

Relatedly, Dr. Mulder concluded that Respondent had not met its corresponding responsibility because ''the number of pills being dispensed within a given month * * * exceeded safe limits.'' *Id.* at 540. Dr. Mulder further testified that the pharmacist should have told the patient that ''he cannot fill those'' prescriptions and notified the doctor. *Id.*

Mr. Street testified that B.W. had degenerative disk disease and chronic pain in the lower back. May 24, 2005 Tr. 111–12. Mr. Street testified that Dr. Blackmon's prescribing of hydrocodone

[37] According to Dr. Montgomery's review of W.T.'s medical records, a progress note prepared on the same day stated that ''she has become dependent upon Xanax and Darvocet.'' RX 5, at 17. Dr. Montgomery did not specify the name of the doctor who prepared this note. However, at the beginning of this paragraph, Dr. Montgomery noted that ''[f]urther records indicate that this patient was followed by HG Barbarito, MD, at the medical group in Johnson City,'' and Mr. Street testified that Drs. Donovan and Barbarito were in the same group. May 24, 2005 Tr. 110. Notably, the affidavit does not address whether it was appropriate for Respondent to dispense this quantity of drugs (600 dosage units) or to dispense prescriptions for these drugs that were being issued in the same timeframe by multiple prescribers.

and diazepam was standard treatment. *Id.* at 112. He further testified that Dr. Blackmon had been called and ''verified what he was treating [B.W.] for when we called him.'' *Id.* Mr. Street was thus ''certain that her meds were for a legitimate medical purpose.'' *Id.* Finally, Mr. Street testified that ''we called Dr. Egidio * * * when [B.W.] started seeing him, and confirmed the diagnosis and treatment[,] so all her meds were given for a legitimate medical purpose.'' *Id.* The ALJ found Mr. Street's testimony credible and the Government offered no evidence to rebut it.

Patient J.Y.

Most of the prescriptions listed on this trace were written by Drs. Blackmon and Haws. *See* GX–15Y. Between August 16, 1996 and March 3, 1997, Dr. Blackmon issued and Respondent dispensed eleven prescriptions for combination hydrocodone/apap drugs and five for diazepam. *Id.* at 2.

Moreover, between April 7 and December 1, 1997, Dr. Haws issued, and Respondent dispensed, seventeen prescriptions for various strengths of hydrocodone/apap products and one prescription for Percodan, a schedule II drug which contains oxycodone and aspirin. *See id.* at 2; *see also* 21 CFR 1308.12(b)(1). There is then a gap in the trace until March 30, 1999, when Respondent recommenced dispensing prescriptions issued by Dr. Haws for combination hydrocodone/apap. GX15–Y, at 2. Between March 30 and November 22, 1999, Respondent dispensed a total of 20 such prescriptions. *Id.* Moreover, between June 29, 2001, and February 18, 2002, Respondent dispensed another five prescriptions issued by Dr. Haws to J.Y. for combination hydrocodone/apap drugs. *Id.* at 1.

Regarding Dr. Haws' prescriptions, Dr. Ferrell testified that ''[y]ou've got to wonder what point in time was he actually having dental problems,'' and that ''[i]n that long of a treatment, I would have had to have some kind of documentation on what's wrong with the patient.'' Tr. 363. Dr. Ferrell further testified that Respondent ''should have verified that [the] patient had a legitimate need for a controlled substance for that long a period of time.'' *Id.* at 364.

While Dr. Mulder found that the prescriptions issued by Dr. Blackmon ''could have been dispensed for legitimate purposes,'' he further explained that ''in [his] experience, to have prolonged dental pain that requires narcotics over that length or period of time is somewhat problematic.'' *Id.* at 541. Dr. Mulder added that ''this is unusual for dentists to be prescribing [analgesic medications] for an ongoing period of time,'' and that ''[f]or dentists to prescribe, it's usually short-term, episodic, due to acute pain * * * or for operative issues and not for long-term chronic pain problems.'' *Id.* at 542. Dr. Mulder further testified that it ''would be quite unusual'' for a dentist to be ''qualified to treat chronic pain,'' *id.* at 543, and that the dentist should have been called and asked what type of treatment the patient was undergoing. *Id.* at 542.

On re-direct examination, Dr. Mulder testified that ''[t]here's obviously a finite limit to how many teeth you can pull out.'' Tr. 563–64. Dr. Mulder then testified, however, that ''the repetitive prescription, month after month after month, it just seemed * * * with that particular file, I—it probably—I couldn't state that it violated standards. It just seemed a little unusual to have that many sequential prescriptions from a dentist for the same patient.'' *Id.* at 564.

Mr. Street testified that J.Y. ''was another typical Dr. Haws patient'' who had ''low income, no insurance,'' and needed much work. May 24, 2005 Tr. 112. Mr. Street further testified that ''we stayed in contact with * * * Dr. Haws'' office * * * frequently to confirm that they were still getting treatment * * * on a regular basis[,]'' and asked ''[i]s this patient still getting work done?'' *Id.* Mr. Street then testified that ''they would confirm that, and that would be documented in the computer.'' *Id.* at 112–13. Here, again, the ALJ found this testimony credible, *see* ALJ at 62, and the Government offered no evidence to rebut it.[38]

Respondent's Other Evidence

As previously stated, Respondent elicited extensive testimony on a variety of factual issues from Mr. Richards, a private investigator it hired following the initiation of this proceeding. Beyond the testimony that has been discussed above, Mr. Richards also testified about interviews he conducted with some of the physicians, some employees of both the physicians and Mr. Street, and some of the patients whose prescriptions were discussed above.

All of this testimony was, of course, hearsay, and while hearsay is admissible in these proceedings, it must still be ''reliable, probative, and substantial.'' 5 U.S.C. 556(d). As for the reliability of this evidence, when asked by the ALJ whether he found the people he interviewed to be credible, Mr. Richards attempted to bolster their credibility by asserting that ''they didn't have a dog in the fight,''[39] but then added ''whether they were 100% credible, who the heck knows.'' May 24, 2005 Tr. 72. Moreover, it is undisputed that these statements were gathered during the course of, and for the very purpose of being used in, this litigation. The statements which Mr. Richards testified to were generally not sworn and were made by their various declarants long after the underlying events. Furthermore, the record does not reflect what preliminary discussions occurred between Mr. Richards and the declarants and the extent to which the declarants needed to have their memories refreshed or may have been prompted by suggestive interviewing techniques. Finally, the statements were generally vague as to dates of the underlying events and lack probative force.

With regard to the prescribers that he interviewed, Mr. Richards testified that Dr. Blackmon stated that Mr. Street ''called many times checking on patients and prescriptions that he wrote.'' *Id.* at 19. Dr. Blackmon's statement does not discuss any specific conversations or prescriptions and thus, even if I held that it was reliable, lacks probative value. To similar effect is Mr. Richard's testimony regarding the statements of Dr. Lynch and Dr. Slonaker. *Id.* at 21–22; *id.* at 24.

Mr. Richards also testified that Dr. Hartsell stated to him that:

> [m]y file on Ms. [H.T.] reflects that Jeff or someone in his pharmacy called and verified one of her Lorazepam prescriptions. Her file shows that on July 19, 2001, * * * the Medicine Shoppe called and said that she was trying to have an Ativan prescription filled a little early. I had cut her dosage down on Ativan, but since she was out of the drug she must have been doubling up.

Id. at 20–21. The prescription trace for H.T. indicates, however, that the actual prescription was telephoned in to Respondent. *See* GX 15–U, at 15. Thus, Dr. Hartsell's statement does not accurately reflect the circumstances surrounding the filling of the prescriptions. And given all of the prescriptions that Dr. Hartsell wrote for

[38] While Dr. Montgomery could not review J.Y.'s medical record because they were ''not available,'' he then stated that ''Dr. Haws is a dentist and I probably can surmise the patient was having significant dental problems given the number of prescriptions that are recorded.'' RX 5, at 18. Dr. Montgomery's statement is nothing more than speculation.

[39] The evidence suggests, however, that Drs. Blackmon, Egidio, and Slonaker had previously been investigated by various law enforcement and licensing authorities including DEA. Tr. 60; May 24, 2005 Tr. 56–58. Furthermore, those patients who were having their illegitimate prescriptions filled by Respondent clearly had ''a dog in the fight.''

H.T., that he frequently wrote prescriptions for as many as three different opiates at a time,[40] and that Mr. Street testified that both Drs. Hartsell and Sibley were aware that each was prescribing opiates to H.T. at the same time and that each doctor ''okayed it,'' May 24, 2005 Tr. 109, it is perplexing that Dr. Hartsell did not relate that H.T.'s file contained a note that he had received a phone call from Mr. Street or his employees regarding the prescriptions being issued by Dr. Sibley and thus corroborating Mr. Street's testimony.[41]

Mr. Richard's testimony regarding the interviews he conducted with the employees of various doctors was also typically lacking in probative force. For example, Mr. Richards testified that an employee of a clinic ''said that she talks frequently to people in Jeff's pharmacy.'' May 24, 2005 Tr. at 22. Likewise, Mr. Richards also testified that an employee of a neurology group had told him that she had worked for the group ''for three years, and during that period Jeff has called my office questioning prescriptions written by physicians in our group.'' *Id.* at 23.[42] Again, neither this testimony—nor the other hearsay statements of various doctors' employees—addresses any of the specific prescriptions at issue in this proceeding.

Mr. Richards also testified as to interviews he conducted of several employees of Mr. Street. According to Mr. Richards, these employees generally stated that they had seen Mr. Street call physicians to verify prescriptions. However, none of these statements relate to any specific patient or prescription. *See id.* at 25–26; 27–30. Mr. Richards further testified that these employees had told him Mr. Street ''called doctors anytime he had a prescription that he was not certain about, and that he documented it in his computer.''[43] *Id.* at 28.

According to Mr. Richards, a pharmacy technician who worked for Mr. Street ''was aware of several instances where Mr. Street reported customers to the police for forged prescriptions.'' *Id.* at 30. Mr. Richards subsequently testified that he had talked with a retired detective regarding various police reports involving Respondent. According to Mr. Richards, Mr. Street reported incidents of suspected prescription fraud to the police on January 16 and September 13, 2001, and February 11 and April 5, 2002. *Id.* at 71–72. The actual incident reports were not, however, introduced into evidence and Mr. Richards testified only to the date, time and drug involved and not the underlying circumstances of each incident. *See id.*

Mr. Richards also testified that he had interviewed many of the patients whose prescriptions were discussed above. While the patients typically related to Mr. Richards that Mr. Street had never refilled their medications early and had counseled them regarding the addictive nature of their drugs, only two of the patients related that Mr. Street had called a particular physician. *See* May 24, 2005 Tr. at 45–46 (statement of W.L. that Mr. Street had called Dr. Blackmon many times); *id.* at 50 (B.W.'s statement that she was aware that Mr. Street called Dr. Egidio but not specifying the date). Because Mr. Street specifically testified that he called Dr. Blackmon regarding W.L.'s prescriptions, *id.* at 90–91, and Dr. Egidio regarding B.W.'s prescriptions, *id.* at 112, and the ALJ credited Mr. Street's testimony in each instance, it is unnecessary to decide whether to give either of these statements any weight.

Discussion

Section 304(a) of the Controlled Substance Act provides that ''[a] registration * * * to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a). In determining the public interest, the Act directs that the Attorney General consider the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id. section 823(f).

''[T]hese factors are * * * considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked.'' *Id.* Moreover, case law establishes that I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). Finally, where the Government has made out its *prima facie* case, the burden shifts to the Respondent to show why its continued registration would be consistent with the public interest. *See, e.g., Theodore Neujahr,* 65 FR 5680, 5682 (2000); *Service Pharmacy, Inc.,* 61 FR 10791, 10795 (1996).

In this case, having considered all of the factors, I conclude that the Government's evidence with respect to factors two and four establishes a *prima facie* case that Respondent's continued registration is ''inconsistent with the public interest,'' 21 U.S.C. 823(f), and that Respondent failed to refute this showing. Accordingly, Respondent's registration will be revoked and its pending application for renewal of its registration will be denied.

Factor Two—Respondent's Experience in Dispensing Controlled Substances

Under DEA's regulation, a prescription for a controlled substance is unlawful unless it has been ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). The regulation further provides that while ''[t]he responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, * * * a *corresponding responsibility rests with the pharmacist who fills the prescription.'' Id.* (emphasis added). Continuing, the

[40] The drugs were hydrocodone/apap, apap/codeine # 4, and propoxyphene/apap. *See* GX 15U at 1–2.

[41] Mr. Richards also testified that Dr. Egidio had stated that Mr. Street had called him regarding four specific patients, R.S., B.R., D.C., and B.W. *Id.* at 19. With respect to three of the patients (D.C., B.R. and R.S.), the Government's experts did not find Mr. Street's dispensing to be improper. Finally, because I conclude that the Government did not prove that Respondent's dispensings to B.W. were unlawful, I need not decide whether Mr. Richard's testimony should be given any weight.

[42] Mr. Richards further testified that during his interview of Ms. Timbs, ''she was shown a copy of a prescription'' that was written by one of the physicians who practiced with her employer, Doctor's Care. May 24, 2005 Tr. 22. Mr. Richards went on to testify that ''Mr. Street felt the prescription was suspicious and called Doctors Care,'' which told him that the physician had not prescribed Xanax, but only Triamcinolone Cream. *Id.* Notably, Mr. Richards did not testify that Ms. Timbs told him that she recalled Mr. Street's phone call or the circumstances surrounding the prescription. *See id.*

[43] Given this, it is perplexing that Mr. Street did not produce any printouts from his computer to support his claims of having called the physicians who issued the many suspicious prescriptions which he filled, and that he testified that he did not even know if he could print this information. *See* May 24, 2005 Tr. 154.

regulation states that ''the person knowingly filling such a purported prescription, as well as the person issuing it, [is] subject to the penalties provided for violations of the provisions of law relating to controlled substances.'' *Id.*

DEA has consistently interpreted this provision as prohibiting a pharmacist from filling a prescription for a controlled substance when he either ''knows or has reason to know that the prescription was not written for a legitimate medical purpose.'' *Medic-Aid Pharmacy,* 55 FR 30043, 30044 (1990); *see also Frank's Corner Pharmacy,* 60 FR 17574, 17576 (1995); *Ralph J. Bertolino,* 55 FR 4729, 4730 (1990); *United States* v. *Seelig,* 622 F.2d 207, 213 (6th Cir. 1980). This Agency has further held that ''[w]hen prescriptions are clearly not issued for legitimate medical purposes, a pharmacist may not intentionally close his eyes and thereby avoid [actual] knowledge of the real purpose of the prescription.'' *Bertolino,* 55 FR at 4730 (citations omitted).[44]

Accordingly, when a customer presents a suspicious prescription, at a minimum, a pharmacist has a duty to verify the prescription with the prescriber. Moreover, even if a prescriber tells a pharmacist that a prescription has been issued for a legitimate medical purpose, a pharmacist cannot ignore evidence which provides reason to believe that the prescription has not been issued for a legitimate medical purpose or that the prescriber is acting outside of the usual course of his or her professional practice.

The ALJ found that Respondent's dispensed ''over 124 controlled substance prescriptions'' which were written by Dr. Watts, a veterinarian, and which were presented by Dr. Watts' brother even though they were written in the names of fictitious patients. ALJ at 17. The drugs were then diverted to Dr. Watts, who personally abused the drugs. During the period in which Respondent filled these prescriptions, Dr. Watts did not hold a DEA registration or a state license as he had allowed both to expire. *See United Prescription Services, Inc.,* 72 FR 50397, 50407(2007) (''A controlled-substance prescription issued by a physician who lacks the license necessary to practice medicine within a State is * * * unlawful under the CSA.''); *United States* v. *Moore,* 423 U.S. 122, 140–41 (1975) (''In the case of a physician, [the CSA] contemplates that he is authorized by the State to practice medicine and to dispense drugs in connections with his professional practice.'').[45]

Moreover, the prescriptions were being presented ''almost every day [or] every other day,'' Tr. 62, and were for drugs which contain hydrocodone. As Respondent's own witness testified, ''all of the prescriptions that Dr. Watts wrote that [Mr. Street] filled for any kind of pain drugs contained acetaminophen,'' a drug which ''is toxic to certain animals.'' May 24, 2005 Tr. 16.

While the ALJ did not consider this evidence in her analysis of whether Respondent dispensed controlled substances in violation of the prescription requirement,[46] she nonetheless noted that ''the pattern of Dr. Watts' brother bringing these prescriptions to the Respondent for filling, and the fact that the prescriptions were written in other people's names, should have caused Mr. Street to investigate the prescriptions prior to dispensing the medications.'' ALJ at 76. The ALJ also noted that ''[s]uch conduct by the Respondent's main pharmacist could threaten the public health and safety, for such conduct [by Dr. Watts] easily could have indicated diversion of controlled substances. Yet Mr. Street filled these prescriptions without further investigation.'' *Id.* at 76–77.

I agree. There was ample evidence available to Mr. Street (and Respondent) to question the legitimacy of the prescriptions even if Mr. Street was unaware that Dr. Watts no longer held a DEA registration and a state license. Beyond the testimony that veterinarians usually purchase the controlled substances they dispense directly from wholesale distributors and dispense the drugs directly to an animal's owner, the repeated appearance of Dr. Watts' brother at Respondent to present prescriptions which were issued in other persons' names and pick up the drugs was highly suspicious and should have prompted Mr. Street to question the legitimacy of the prescriptions. Finally, Dr. Watts was writing prescriptions that according to Mr. Richards, were for pain drugs which ''contained acetaminophen'' and ''acetaminophen is toxic to certain animals.'' This should have alerted Mr. Street to the fact that Dr. Watts' prescriptions were not being issued for a ''legitimate medical purpose'' and that Watts was not acting in the ''usual course of his professional practice.'' 21 CFR 1306.04(a). I thus conclude that Mr. Street (and his pharmacy) had reason to know that these prescriptions were unlawful under federal law and that he repeatedly violated his corresponding responsibility when he filled them.[47]

The Prescription Traces

As explained above, the Government also introduced into evidence twenty-five prescription traces which it contends show that Mr. Street and Respondent repeatedly dispensed controlled substances in violation of federal law. While noting that the traces and the Government's expert testimony suggest that the Government had ''met its burden of proof,'' the ALJ then concluded that ''Respondent presented evidence that demonstrated that Dr. Mulder and Dr. Ferrell did not have the complete picture of the Respondent's dispensing practices from the selected prescription traces.'' ALJ at 75. In support of her conclusion, the ALJ specifically noted ''Mr. Street's credible testimony concerning his personal knowledge of his customers, the actions he took to coordinate his dispensings with the patients' health care providers,'' and the testimony of Mr. Richards. *Id.* The ALJ thus rejected the entirety of the Government's prescription trace evidence.

[44] As the Supreme Court recently explained, ''the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006) (citing *United States* v. *Moore,* 423 U.S. 122, 135 (1975)).

[45] A pharmacy has a duty to periodically check to see that a practitioner retains the authority to practice medicine and dispense a controlled substance. As the ALJ recognized, failure to do so could threaten public health and safety because there is usually a good reason for why a practitioner has lost his or her state license and DEA registration. In light of the other evidence regarding Respondent's filling of Dr. Watts' prescriptions, I need not decide whether it also violated this duty.

[46] The ALJ considered the evidence regarding Respondent's filling of Dr. Watts' prescriptions only under factor five. ALJ at 76. This evidence is, however, also highly relevant in the consideration of Respondent's experience in dispensing controlled substances.

[47] The Show Cause Order also alleged that Dr. Blackmon ''issued numerous controlled substance prescriptions for no legitimate medical reason'' and that Respondent filled large numbers of these prescriptions. Show Cause Order at 1–2. While the Government appears to rely on the fact that some of Blackmon's patients traveled great distances to have their prescriptions filled at Respondent, some other area pharmacies continued to fill Blackmon's prescription.

The record does not establish, however, how many of Dr. Blackmon's patients were traveling great distances to fill their prescriptions at Respondent. Moreover, with respect to J.Y., one of Blackmon's patients whose prescriptions were entered into evidence, the Government's own experts testified that Respondent's dispensings were not improper. I thus conclude that the appropriate resolution of whether Respondent was unlawfully dispensing prescriptions should focus on the evidence of its actual dispensings as indicated in the traces and not on the Government's generalized assertions.

While I agree that the Government failed to prove that Respondent unlawfully dispensed control substances to a number of the patients, in other instances the ALJ ignored relevant evidence. More specifically, with respect to multiple patients, the ALJ ignored clear evidence of doctor shopping for which Mr. Street had no explanation. She also ignored several instances in which Mr. Street's testimony failed to address the Government experts' testimony, as well as instances in which his testimony was inconsistent with other evidence.

As found above, either one or both of the Government's experts concluded that Respondent did not violate its corresponding responsibility in the dispensings it made to the following patients: M.B. (GX 15–A); D.C. 2 (GX 15–C), D.E. & J.E. (GX 15–E), B.R. (GX 15–O); W.B. (GX 15–P), R.S. (GX 15–S), and W.T. (GX 15–W). Based on my findings with respect to J.S. (GX 15–T), I also conclude that the Government did not prove by a preponderance of the evidence that Respondent unlawfully dispensed controlled substances to him.

With respect to patient A.S., to whom Respondent dispensed a total of 369 dosage units of combination hydrocodone/apap drugs over a ten-and-a-half month period pursuant to prescriptions issued by eight different prescribers, Dr. Mulder testified only that ''[i]t would have been appropriate for [Respondent] to have notified'' the various physicians that it was receiving a number of different prescriptions ''for this narcotic so that they could concentrate that in one place.'' Tr. 531. Dr. Mulder did not testify that Respondent's failure to notify the physicians was a breach of its corresponding responsibility. Moreover, the ALJ credited Mr. Street's testimony that A.S. had to switch her primary care physicians because they closed their practices and had also gone to the emergency room. The Government did not rebut this testimony. I therefore conclude that Respondent's dispensings to A.S. did not violate federal law.

With respect to patient B.W., Drs. Ferrell and Mulder respectively concluded that Dr. Blackmon's hydrocodone/apap (7.5/500) prescriptions were high and ''exceeded safe limits.'' Tr. 540. These dispensings averaged, however, only 170 tablets per month and less than six tablets per day and were thus substantially under the four gram level at which acetaminophen causes toxicity. Finally, the ALJ found credible Mr. Street's testimony that he had verified the prescriptions with Dr. Blackmon and the Government offered no evidence to rebut his contention. I therefore conclude that Respondent's dispensings to B.W. did not violate federal law.

Next, both patients D.C. (GX 15–B) and J.Y. (GX 15–Y) received large numbers of prescriptions from Dr. Haws, a dentist. As found above, on re-direct examination regarding J.Y., Dr. Mulder testified that ''[t]here's obviously a finite limit to how many teeth you can pull out.'' Tr. 563–64. Continuing, Dr. Mulder testified that ''the repetitive prescription, month after month after month, it just seemed * * * with that particular file, I—it probably—I couldn't state that it violated standards. It just seemed a little unusual to have that many sequential prescriptions from a dentist for the same patient.'' *Id.* at 564.

Based on Dr. Mulder's testimony, I conclude that the Government has not proved that Respondent violated federal law in its dispensings to J.Y. Furthermore, because Respondent's dispensings to D.C., fit the same pattern, I also conclude that the Government has not proved that Respondent violated federal law in its dispensings to D.C.

The evidence pertaining to the remaining patients does, however, establish that Respondent repeatedly dispensed controlled substances in violation of federal law. In particular, the record shows that Respondent repeatedly filled prescriptions presented by persons who were clearly engaged in doctor shopping. Moreover, the evidence shows that Respondent also filled prescriptions which could have been toxic if taken in the prescribed amounts or were for drugs which were contraindicated for the patient.

It is true that in some instances, Mr. Street testified that he had contacted a patient's prescribers and that they were ''okay'' with the fact that the other doctor was also prescribing. While the ALJ credited this dubious testimony, I need not reject her credibility findings *in toto* to conclude that the Government proved its case with respect to the remaining patients because there were numerous dispensings for which Mr. Street offered no explanation at all. Indeed, there is even evidence that Respondent filled prescriptions which Mr. Street himself acknowledged were outside of the course of the practitioner's professional practice and did so after Mr. Street claimed to have notified the prescriber that the prescriptions for that drug were unlawful.

For example, Respondent repeatedly dispensed to Patient E.C. alprazolam prescriptions issued by Dr. Hussain and diazepam prescriptions issued by Dr. Slonaker. GX 15–D. In several instances, the prescriptions were dispensed only days apart and the Government's experts testified that these drugs ''have a synergistic effect'' when taken together, Tr. 297, and that taking these drugs in combination could have devastating effects. *Id.* 515. Moreover, Respondent also dispensed to E.C. three prescriptions for hydrocodone/apap that were issued by Dr. Hussain (who wrote two of the Rxs) and Dr. Wiles within a four-day period; the first two of these prescriptions were filled on consecutive days.

Mr. Street testified only as to why Respondent had also filled the prescriptions which Dr. Slonaker simultaneously issued for two combination hydrocodone/apap drugs. He offered no testimony to explain why Respondent dispensed the hydrocodone prescriptions issued by Drs. Hussain and Wiles and the benzodiazepine prescriptions issued by Drs. Hussain and Slonaker. I thus conclude that Respondent repeatedly violated federal law in dispensing these prescriptions to E.C.

With respect to patient S.F., the Government's evidence showed that Respondent simultaneously dispensed extraordinary quantities of Lorcet, a combination hydrocodone/apap 10/650 drug, and Dilaudid, a schedule II controlled substance, based on prescriptions which were written by Dr. Blackmon. More specifically, Dr. Ferrell testified that S.F. was receiving approximately 17 tablets a day of Lorcet and 12 tablets a day of Dilaudid. Tr. 306. Dr. Ferrell further noted that S.F. was ''physically dependent'' on the drugs. *Id.* at 308. Moreover, Respondent was dispensing Lorcet in amounts which, as Dr. Mulder testified, clearly exceeded ''acceptable limits'' and ''would be potentially toxic.''[48] *Id.* at 511. The trace also showed that Respondent dispensed a prescription for Buprenex, a drug which can cause acute withdrawal symptoms in patients taking Dilaudid and other opiates. Tr. 307.

Mr. Street testified that he contacted Dr. Blackmon frequently because S.F. ''was always wanting his medications

[48] Although Dr. Mulder testified that the dosages of hydrocodone/apap products was twice the acceptable limits, when Respondent was dispensing an average of 17 tablets a day, the amount was nearly three times the acceptable limit.

While there was testimony that patients can develop a tolerance to opiates, *see* RX 5, at 5, Respondent offered no evidence as to why it would be appropriate to continue to prescribe combination hydrocodone drugs at this level when other stronger opiates, which do not contain acetaminophen, are available. In any event, I do not rely solely on the quantity of the hydrocodone/apap prescriptions, but rather on all the evidence related to S.F. in concluding that Respondent should not have filled the prescriptions.

early,'' and was presenting prescriptions ''too close to'' the other prescriptions ''he brought in.'' May 24, 2005 Tr. 85. He also asserted that Dr. Blackmon was ''monitoring him closely,'' and that Blackmon told him that S.F. needed large amounts of narcotics to ''function.'' *Id.* Mr. Street offered no evidence to refute the testimony of Dr. Mulder—who is a pain management specialist—that the level of drugs being prescribed by Blackmon was potentially toxic. Consistent with the testimony of Dr. Mulder that a pharmacist has an obligation ''not to dispense medication knowingly harmful to the patient,'' I conclude that contacting Dr. Blackmon was not enough and that Mr. Street had an affirmative obligation to refuse to dispense these drugs to S.F.

The quantities of drugs which Dr. Blackmon was prescribing were extraordinary, greatly exceeded acceptable levels of acetaminophen, and were potentially toxic. Moreover, that S.F. was ''always wanting his medications early'' and presenting prescriptions ''too close to'' other prescriptions he had brought in were telltale signs that he was either a drug abuser or selling the drugs to others.

Dr. Blackmon's issuance of the Buprenex prescription provided a further reason why Mr. Street should have questioned the legitimacy of the prescriptions and stopped filling them. Mr. Street justified dispensing this drug on the ground that ''[t]he *only* precaution regarding Buprenex and hydrocodone is that the combination may increase drowsiness,'' May 24, 2005 Tr. at 87 (emphasis added). Mr. Street's testimony is false. As found above, under the caption ''Use in Narcotic-Dependent Patients,'' the package insert clearly states that: ''[b]ecause of the narcotic antagonist activity of Buprenex, use in the physically dependent individual may result in withdrawal effects.'' Given the prescriptions Dr. Blackmon was writing and S.F.'s conduct which indicated—as Dr. Ferrell observed—that he was physically dependent, I conclude that Mr. Street had reason to know that Dr. Blackmon was not writing prescriptions for legitimate medical purposes. Respondent therefore violated federal law by filling these prescriptions.[49]

Patient B.J. obtained controlled-substance prescriptions (which Respondent filled) from twenty-one different prescribers for five different benzodiazepines, three different schedule III narcotics (hydrocodone/apap, propoxyphene/apap, and Fiorinal with codeine), Endocet, a schedule II drug, and Stadol. GX 15–G. More specifically, the evidence showed that Respondent repeatedly dispensed multiple prescriptions issued by Dr. Greenwood for alprazolam and Dr. Varney for lorazepam for a period of six months. The trace also showed that in multiple instances, Respondent dispensed schedule III narcotics such as Fiorinal with codeine and propoxyphene which were issued by different doctors within the same timeframe. *Id.*

Mr. Street testified that he called both Dr. Varney and Dr. Greenwood's practice group and that ''[t]hey were both aware they were both prescribing at the same time.'' May 24, 2005 Tr. 89. Mr. Street did not, however, testify as to why, between March and October 1999, his pharmacy repeatedly filled prescriptions for propoxyphene/apap, which were written by Dr. Gastineau, and Fiorinal (butalbital) with codeine, which were written by Dr. Varney. Here again, the evidence establishes that Mr. Street and Respondent failed to comply with their corresponding responsibility under federal law.

The evidence regarding W.L. showed that Dr. Blackmon prescribed, and Respondent dispensed, 239 controlled substance prescriptions in a fourteen-month period. In 1996, Respondent made 163 dispensings (totaling 5,380 dosage units) of Buprenex, thirty-one dispensings of hydrocodone/apap (totaling 2550 dosage units), and twenty-two dispensings of diazepam (totaling 1530 dosage units). Furthermore, the Buprenex package insert warns that ''[p]articular care should be taken when Buprenex is used in combination with central nervous system depressant drugs,'' that ''[p]atients receiving Buprenex in the presence of other narcotic analgesics [and] benzodiazepines * * * may exhibit increased CNS depression,'' and that ''[w]hen such combined therapy is contemplated, *it is particularly important that the dose of one or both agents be reduced.*'' (emphasis added).

Blackmon did not, however, reduce the dosing of the Buprenex, the hydrocodone, or the diazepam. Rather, he prescribed to W.L. increasingly large amounts of the three drugs and Respondent filled these prescriptions.

The ALJ credited Mr. Street's testimony that ''the only thing the package insert says about combining the two drugs of respiratory problems when Diazepam is given with Buprenex'' and that the physician should ''proceed with caution if you're going to administer the two drugs.'' ALJ at 43. Mr. Street's testimony did not accurately reflect the entire scope of the Buprenex warnings,[50] which clearly showed that Blackmon's prescriptions were improper.

As the testimony established, a pharmacist is responsible for knowing how a drug will interact with other drugs his patient is taking. Tr. 280–81; *see also* Tennessee Bd. of Pharmacy R. 1140–3.01(3)(a). I thus adopt Dr. Mulder's conclusion that the prescriptions should not have been filled. Tr. 516. I further conclude that Mr. Street and Respondent failed to comply with their corresponding responsibility under federal law in the dispensings to W.L.

The evidence regarding Angela L. showed that she had received numerous prescriptions from a dentist, Michael Haws. While most of the prescriptions were for combination hydrocodone/apap drugs, on September 11, 1997, Respondent also dispensed a prescription (which was also issued by Haws) for Tussionex Pennkinetic Suspension, a combination of hydrocodone and chlorpheniramine. Respondent also dispensed two refills of the Tussionex to Angela L.

As found above, Respondent had previously made three dispensings of large quantities of Tussionex (which again was prescribed by Dr. Haws) to Rex L., who was Angela's spouse. Regarding Respondent's dispensings of Tussionex to Rex L., Dr. Ferrell testified that it is ''unusual to see a dentist write for cough syrup.'' Tr. 325. Responding to this testimony, Mr. Street explained that ''this was filled by a relief pharmacist,'' and that when he ''came back to work'' and caught it, he then ''alerted Dr. Haws to the fact that * * * it's not within your usual course of practice to prescribe Tussionex.'' May 24, 2005 Tr. at 93. Mr. Street then testified that ''he [Haws] ceased doing that[,]'' and ''I've never seen him do it again.'' *Id.*

While Mr. Street's testimony did not specify which of the dispensings to Rex L. had prompted him to contact Dr. Haws, the evidence clearly shows that Respondent dispensed Tussionex to Angela L. pursuant to prescriptions issued by Dr. Haws on three occasions after the dispensings it made to her husband. Based on Mr. Street's testimony that prescribing Tussionex was outside of the course of Dr. Haws's professional practice, I also conclude that the Tussionex prescriptions which Haws wrote, and Respondent filled for Angela L., were also outside of the

[49] Under the CSA, it does not matter whether S.F. was physically dependent on the drugs or was selling them on the street.

[50] I therefore also reject the ALJ's credibility finding.

course of his professional practice. Mr. Street offered no explanation as to why his pharmacy filled these prescriptions. I thus conclude that Mr. Street and Respondent violated federal law in dispensing them.[51]

Relatedly, the Tussionex prescriptions issued to Rex L. were for very large quantities. As the evidence showed, on August 1, 1997, Respondent dispensed to Rex L. 720 ml. of this drug; three days later, it dispensed to him another 360 ml. Moreover, on August 29, 1997, Respondent dispensed to Rex L. another 720 ml. of the drug. Dr. Ferrell testified that ''the usual dosage'' of this drug ''is 5 milliliters every 12 hours,'' (approximately 300 ml. for a thirty day period) and that he could not ''think of any reason why a prescription for'' 720 ml. would be necessary. Tr. 324–25.

Dr. Mulder also noted the evidence that Rex L. was engaged in doctor shopping. As found above, between November 10, 1997 and January 9, 1998, Respondent filled numerous prescriptions for opiates which included Lorcet, Lortab, Tussionex, MS Contin, and Dilaudid. The prescriptions were written by three different doctors (Drs. Haws, Caudill, and Egidio), and most of them were dispensed only days apart.

While the ALJ found credible Mr. Street's testimony that a relief pharmacist filled the Tussionex prescription that was issued by Dr. Haws, ALJ at 46, the evidence shows that Respondent made a total of three dispensings of this drug pursuant to prescriptions by Dr. Haws. Moreover, even if a relief pharmacist made all three dispensings, Respondent is still properly charged with violating its corresponding responsibility. Moreover, Mr. Street did not testify as to why his pharmacy filled the prescriptions that Rex L. presented for opiates from Drs. Haws, Caudill, and Egidio. I thus conclude that Mr. Street and Respondent violated their corresponding responsibility in making these dispensings.

The evidence showed that K.P. (GX 15–K) received prescriptions from more than two dozen prescribers which were dispensed by Respondent. Most of the prescriptions were for combination hydrocodone/apap drugs, although she also obtained prescriptions for several other controlled substances. Between April 20, 2001, and April 19, 2002, Respondent dispensed to K.P. 58 prescriptions for a total of 2,355 dosage units of combination hydrocodone/apap drugs. Both Drs. Ferrell and Mulder concluded that K.P. was a doctor shopper.[52]

The ALJ credited Mr. Street's testimony that K.P. had seen five different primary care physicians either because the physicians closed their practices or the State's Tenncare program had moved her to a different physician. The ALJ also credited Mr. Street's testimony that K.P. had seen neurosurgeons who referred her to a pain management specialist (Dr. Smyth), who also proceeded to prescribe narcotics for her, and that both were ''aware that they were prescribing them at the same time.'' [53] ALJ at 47 (citing May 24, 2005 Tr. 94). Finally, the ALJ credited Mr. Street's testimony that K.P. had seen seven emergency room doctors because of complications she had from major surgeries.

Notably, two of the physicians K.P. obtained prescriptions from were orthopedic surgeons (Drs. Beaver and J. Williams) and Mr. Street offered no testimony that he had contacted them to verify their prescriptions and make them aware that K.P. was also obtaining prescriptions from Dr. Wiles (the neurosurgeon). Nor did he testify that he contacted Dr. Wiles to inform him that K.P. was obtaining prescriptions from Drs. Beaver and Williams. Accordingly, I conclude that Mr. Street and Respondent violated their corresponding responsibility under federal law in dispensing to K.P.

Patient P.P. (GX 15–L), who was K.P.'s husband, obtained prescriptions from eleven prescribers which were dispensed by Respondent. The evidence showed that during the same period in which it was dispensing hydrocodone/apap prescriptions written by Dr. Lynch, it was also dispensing prescriptions for hydrocodone/apap, propoxyphene/apap, and codeine/apap which were written by Dr. Wyche. The trace also showed that between June 2001 and April 2002, Respondent dispensed to P.P. prescriptions for hydrocodone/apap which she obtained from seven different doctors.

In his testimony, Dr. Mulder concluded that Respondent had failed to comply with its corresponding responsibility because of the number of prescriptions that were being dispensed each month, the dispensing of multiple narcotics at the same time, and that multiple physicians were prescribing to P.P. Dr. Ferrell also noted the prescribing by multiple physicians. Finally, Dr. Mulder noted that K.P. and P.P. lived at the same address and that it is ''highly unusual'' for two family members to have ''medical problems that * * * required the same level of prescribing within each * * * month.'' Tr. 524.

Mr. Street testified that P.P. was mainly seen by Drs. Tochev and Tanner, who were his primary care physicians, and that Dr. Tochev referred P.P. to a pain management group, which started prescribing pain medications for him. Mr. Street further testified that ''we contacted'' the pain management group and Dr. Tochev, and that ''neither one * * * were [sic] aware [that] the other one was prescribing.'' May 24, 2005 Tr. at 96. Mr. Street added that ''after we contacted them, pain management cease[d] to write any more pain meds'' for P.P. *Id.* As for the other evidence of doctor shopping, Mr. Street explained that P.P. had seen dentists and emergency room doctors a couple of times and that ''if you knew the doctors in the area like I do, it shouldn't present a problem.'' *Id.* Mr. Street did not testify that his pharmacy called any of these other prescribers and the fair inference to be drawn from this testimony is that Mr. Street did not call either the dentists or the emergency rooms before filling the prescriptions.[54]

[51] I also reject the ALJ's finding that Mr. Street credibly testified that following his phone call to Dr. Haws, Respondent did not receive any more Tussionex prescriptions that were issued by Dr. Haws.

[52] This Agency is well familiar with ''doctor shopping.'' Expert testimony is not essential to prove that a person engaged in it. Rather, ''doctor shopping'' can be proved based solely on documentary evidence.

[53] The implication of Mr. Street's testimony was that the doctors agreed that K.P. could receive narcotics from multiple physicians in different practices. K.P.'s pain management specialist was also Dr. Smyth, the same doctor who Mr. Street, in testifying about P.P. (K.P.'s husband), claimed had stopped writing prescriptions for narcotics upon being notified by Mr. Street that he was also receiving ''pain meds'' from his primary care physician. May 24, 2005 Tr. at 96.

[54] In rejecting the Government's evidence, the ALJ also relied on Mr. Street's ''knowledge of [his customer's] medical history and treatments.'' ALJ at 74. While acknowledging that ''Mr. Street reviewed medical records in preparation for this hearing,'' the ALJ credited his testimony because it ''demonstrated a more generic knowledge of each patient's situation, [and] not a prompted, detailed knowledge that would come from reviewing and attempting to memorize patients' medical conditions.'' ALJ at 74 n.12. The ALJ thus concluded that Mr. Street's testimony was ''a credible rendition'' of what he knew about his customers ''at the time he dispensed the controlled substances.'' *Id.*

Even assuming that Mr. Street would recall the medical conditions of these twenty-five patients out of the 17,000 patients he testified Respondent had, and crediting Mr. Street's testimony, *see* May 24, 2005 Tr. 95, a pharmacist's knowledge of a customer's medical conditions does not excuse him from his duty to verify the legitimacy of prescriptions when there is reason to suspect that the customer is engaged in doctor shopping. Nor does it excuse a pharmacist from his responsibility not to dispense drugs that are either being prescribed in quantities which would be toxic to the patient if taken as directed, or contraindicated because of other drugs a patient is taking or the patient's medical conditions.

Mr. Street offered no testimony as to why his pharmacy filled (sometimes only days apart) the multiple narcotic prescriptions that were issued by Drs. Lynch and Wyche during October and November 1999. Moreover, his testimony that he contacted P.P.'s pain management doctor (Dr. Smyth) to inform him that Dr. Tochev was still prescribing and that Dr. Smyth stopped writing is not consistent with the evidence. While Mr. Street did not specify the date that he contacted Dr. Smyth, the evidence shows that his pharmacy filled multiple prescriptions for hydrocodone/apap drugs that were issued by both Drs. Smyth and Tochev between February and April 2002. Indeed, the evidence shows that Dr. Smyth issued, and Respondent filled, a prescription for hydrocodone/apap nearly six weeks after P.P. presented the first prescription he obtained from Dr. Smyth, and only a week after it had filled two additional prescriptions for the same drug that were issued by Dr. Tochev. Moreover, three weeks later, Respondent filled a prescription for methadone which was also issued by Dr. Smyth.

In short, the evidence does not support Mr. Street's testimony. Moreover, his statement to the effect that his dispensings of prescriptions issued by dentists and emergency room physicians should not present a problem if you know the doctors ''like I do,'' is a non-explanation. Even if a pharmacist knows the practice specialty of a prescriber, he must still verify the legitimacy of a prescription when a person is repeatedly presenting prescriptions for the same drug from other prescribers and doing so at frequent intervals. Consistent with the testimony of Drs. Ferrell and Mulder, I thus conclude that Mr. Street and Respondent violated their corresponding responsibility under federal law in dispensing to P.P.

S.P. (GX 15–M) was another patient who presented prescriptions from numerous providers. While most of the testimony focused on narcotic prescriptions, the evidence also showed that in numerous instances, Respondent dispensed to S.P. temazepam prescriptions issued by Dr. Varney and clonazepam prescriptions issued by Dr. Shah. In some instances, the dispensings occurred only a day (or a couple of days) apart. Both of these drugs are benzodiazepines, and as Dr. Mulder testified, taking multiple benzodiazepines has a synergistic effect and can be devastating to the patient.

Mr. Street offered no testimony regarding Respondent's dispensings of these drugs. I therefore conclude that Mr. Street did not contact either prescriber to verify the legitimacy of the prescriptions and to inform them that S.P. was presenting prescriptions from the other physician for another benzodiazepine. Accordingly, I also conclude that Mr. Street and Respondent did not comply with their corresponding responsibility under federal law in dispensing these prescriptions to S.P.

The evidence regarding patient J.P. (GX 15–N) showed that Respondent was dispensing to her multiple opiates (Stadol, Darvocet (propoxyphene/apap) and Tylenol 3 (codeine/apap)), as well as benzodiazepines and schedule IV drugs such as fenfluramine and phentermine based on prescriptions issued by Dr. Varney. Moreover, for nearly a year, Respondent repeatedly dispensed to J.P. hydrocodone/apap (for a total of 14 Rxs) that were issued by Dr. Johnson at the same time that it was dispensing the prescriptions issued by Dr. Varney.

Dr. Mulder noted that J.P. was receiving ''seven different addicting medications simultaneously,'' which included ''stimulants and depressants,'' and ''analgesics and anxiolytics.'' Tr. 527. Dr. Ferrell also noted that Darvocet and Tylenol # 3 provide ''about the same'' level of pain relief and did not understand why a physician would simultaneously prescribe them. *Id.* at 336–38.

While Mr. Street testified that he called Dr. Varney regarding his prescribing to J.P. and that there were legitimate medical purposes for this regime, May 24, 2005 Tr. 99, Mr. Street offered no evidence that refuted Dr. Ferrell's testimony on the simultaneous prescribing of Darvocet and Tylenol # 3. Moreover, Mr. Street offered no testimony as to why Respondent repeatedly dispensed the Darvocet and Tylenol # 3 prescriptions issued by Dr. Varney during the same period in which it also dispensed the fourteen Lortab prescriptions that were issued by Dr. Johnson.

I therefore conclude that Mr. Street and Respondent did not verify the legitimacy of the Lortab prescriptions with Dr. Johnson and inform him that J.P. was receiving multiple opiates. I further conclude that Mr. Street and Respondent violated federal law in dispensing the Lortab prescriptions to J.P. when it was also dispensing the Darvocet and Tylenol # 3 prescriptions issued by Dr. Varney.

The evidence regarding R.S. (GX 15–R) showed that during 1999, Respondent dispensed to him 30 prescriptions for alprazolam, 19 prescriptions for clonazepam, two prescriptions for diazepam, and one prescription for lorazepam. Most significantly, for approximately eight months, Respondent dispensed prescriptions for 100 tablets of alprazolam which were written by Dr. Lynch (R.S.'s primary care physician), while it was also dispensing prescriptions for 60 tablets of alprazolam which were written by Dr. Wiley (R.S.'s psychiatrist). Dr. Wiley also prescribed clonazepam, another benzodiazepine, throughout 1999. Both Drs. Ferrell and Mulder found that Respondent's dispensing of the drugs was a violation of its corresponding responsibility.

Mr. Street's justification for the dispensings was that Dr. Wiley had started prescribing the benzodiazepines, ''namely alprazolam for anxiety and clonazepam for depression,'' and that ''we called the doctor and he told me the reason he was prescribing those.'' May 24, 2005 Tr. at 105. Mr. Street then explained that ''later on [R.S.'s] primary care doctor, Dr. Lynch, started prescribing him alprazolam exclusively for anxiety, but he continued to get the clonazepam from his mental health doctor for the depression.'' *Id.*

Mr. Street's testimony suggests that after Dr. Lynch began prescribing alprazolam, R.S. received only clonazepam from Dr. Wiley. But as explained above, for approximately eight months, Respondent repeatedly dispensed alprazolam to R.S. pursuant to prescriptions written by both doctors and many of the dispensings occurred only days apart. Mr. Street offered no explanation for why his pharmacy did so. I thus conclude that Mr. Street and Respondent violated federal law in dispensing the alprazolam prescriptions to R.S.

The evidence shows that Respondent dispensed prescriptions for W.T. (GX 15–V) that were written by fourteen different prescribers for such drugs as alprazolam, Endocet 325, generic oxycodone with acetaminophen, various strengths of hydrocodone/apap, and propoxyphene-hcl. Most significantly, on a single day, Respondent dispensed to W.T. two separate 300-count prescriptions purportedly written by Dr. Donovan for schedule II drugs containing oxycodone and acetaminophen, Endocet 325 and generic oxycodone/apap 5/500. This, as Dr. Ferrell explained, was ''an unusual quantity.'' Tr. 357. Indeed, while Dr. Donovan had previously prescribed these drugs to W.T., the prescriptions had never exceeded 100 tablets and he had never prescribed both drugs at the same time.

Moreover, during the same period, Respondent was also simultaneously dispensing propoxyphene prescriptions written by Dr. Donovan. Finally, Respondent also dispensed three prescriptions for Endocet 325 written by Dr. Haynes during the same period in which it was dispensing Dr. Donovan's prescriptions for drugs containing oxycodone. Dr. Haynes and Donovan did not practice together.

While Mr. Street testified as to the various doctors that W.T. had seen and her medical conditions, at no time did he state that either he or his employees had contacted any of W.T's doctors to verify the legitimacy of the prescriptions. *See* May 25, 2005 Tr. at 110. Mr. Street likewise offered no testimony as to why Respondent dispensed 600 dosage units of oxycodone on a single day or as to why Respondent filled prescriptions for oxycodone that W.T. had presented from Drs. Donovan and Haynes in the same time frame. I thus conclude that Mr. Street and Respondent failed to comply with their corresponding responsibility under federal law when they dispensed to W.T. 600 units of oxycodone on a single day and the oxycodone prescriptions that were written by Drs. Haynes and Donovan during the same period.[55]

Accordingly, having reviewed all of the evidence, I conclude that in numerous instances, Respondent violated federal law in dispensing controlled substances. In so holding, I acknowledge that pharmacists do not practice medicine. But requiring a pharmacist to identify doctor shopping does not require him to practice medicine.

In his affidavit, Dr. Montgomery opined that the prescribing physician ''is the primary responsible party for drug selection and quantity based upon the physician's assessment of the patient.'' RX 5, at 6. While acknowledging—in his words—that ''[t]here are a few occasions when it would appear that [Respondent] fell short of what I would consider optimal pharmacy recognition of a potential drug abuser profile,'' Dr. Montgomery then asserted that ''the physicians who prescribed the patients controlled substances were more responsible for any abuse than the pharmacy filling said prescriptions.'' *Id.*

Respondent's attempt to deflect responsibility for its unlawful dispensings is unavailing. Under the Tennessee Board of Pharmacy's Standards of Practice, a pharmacist is required to review ''a patient's record prior to dispensing each * * * prescription order.'' GX 21, at 2 (Rule 1140–3.01(3)(a)). As part of this review, the pharmacist is further required to evaluate the prescription for, *inter alia*, ''over-utilization,'' ''therapeutic duplication,'' ''drug-drug interactions,'' ''incorrect drug dosage or duration of drug treatment,'' and ''clinical abuse/misuse.'' *Id.* Holding Mr. Street and his pharmacy accountable for dispensing prescriptions when there was reason to believe those prescriptions were not issued for legitimate medical purposes (because those prescriptions were contraindicated to other drugs a patient was taking or the drugs were being prescribed in amounts that would be potentially toxic if taken as directed) thus does no more than require him to comply with the duties imposed on him as a pharmacist under the State of Tennessee's regulations.

Contrary to Dr. Montgomery's opinion, this case is not simply about a few dispensings which ''fell short of * * * optimal pharmacy recognition of a potential drug abuser.'' RX 5, at 6. Rather, it is about the numerous instances in which Respondent and Mr. Street unlawfully dispensed a controlled substance under federal law by ignoring evidence which provided reason to believe that the prescription was illegitimate. *Bertolino*, 55 FR at 4730 (citations omitted). Accordingly, Mr. Street and Respondent are responsible for the numerous unlawful dispensings found above including those which were made to Dr. Watts.

Furthermore, many of the dispensings cannot be attributed to mere oversight, but rather, are flagrant violations of federal law because they involved repeated dispensings to persons who were clearly engaged in doctor shopping and went on for months on end. Moreover, the quantities and combinations of drugs dispensed (including the interactions which would occur if the drugs were actually taken) also support the conclusion that the violations were flagrant. Accordingly, notwithstanding the evidence that Respondent had 17,000 patients, May 24, 2005 Tr. 95, I conclude that Respondent's experience in dispensing controlled substances warrants a finding that its continued registration is inconsistent with the public interest.[56] This finding provides reason alone to revoke Respondent's registration.

Factor Four—Respondent's Compliance With Applicable Laws

As found above, Respondent repeatedly violated DEA regulations and federal law in its dispensings of controlled substances. That analysis is incorporated herein and will not be repeated.

Respondent also failed to comply with federal law and DEA regulations by failing to maintain ''a complete and accurate record of each [controlled] substance [it] received, sold, delivered, or otherwise disposed of.'' 21 U.S.C. 827(a); *see also* 21 CFR 1304.21(a). While the ALJ credited Mr. Street's testimony regarding the 1998 computer ''crash,'' the fact remains that significant discrepancies were found during each of the three audits that were subsequently conducted. Moreover, while Mr. Street challenged the accuracy of each of these audits and presented his own figures, even his audits found that his pharmacy had substantial shortages in multiple drugs.

For example, according to Mr. Street's December 1999 audit, his pharmacy was short 800 tablets of generic hydrocodone/apap 5/500, 589 tablets of generic hydrocodone/apap 7.5/500, 380 tablets of Lortab 7.5/500, 485 tablets of acetaminophen with codeine 300/60, 704 tablets of diazepam 10mg., 200 tablets of Dilaudid (hydromorphone) 4 mg., and 193 tablets of generic hydromorphone 4 mg. There were also numerous overages. These discrepancies are especially noteworthy as the audit period used Respondent's January 11, 1999 inventory as the beginning date and covered only an eleventh-month period.

As for Mr. Street's assertion that the DEA audit was in error because Respondent's diazepam dispensings were recorded on multiple drug usage

[55] In light of the abundant evidence of Respondent's unlawful dispensings, it is unnecessary to make any legal conclusions regarding Respondent's dispensing to Patient H.T, (GX 15–U), who received numerous prescriptions for three different narcotic pain medicines from two prescribers. The ALJ credited Mr. Street's testimony that he had contacted each prescriber, that each was aware that the other was prescribing as well, and that they both ''okayed'' H.T.'s receipt of the prescriptions.

Putting aside that Dr. Hartsell's statement to Mr. Richards made no mention of Mr. Street ever having called him to discuss the fact that H.T. was also presenting prescriptions for hydrocodone/apap from another physician, May 24, 2005 Tr. at 20–21, the notion that a competent physician would willingly continue to prescribe highly abused drugs knowing that her patient was also receiving similar drugs from another prescriber stretches the limits of plausibility. While the Government's experts testified that the prescribing of controlled substances should be coordinated between a patient's physicians so that only one physician is prescribing, neither definitively stated that it is a violation of standards of medical practice for two physicians to be doing so. *See, e.g.*, Tr. 570.

[56] The fundamental question under the CSA is whether Respondent ''has committed acts as would render [its] registration inconsistent with the public interest.'' 21 U.S.C. § 824(a)(4). No amount of legitimate dispensings can render Respondent's flagrant violations ''consistent with the public interest.''

reports, under federal law it is Respondent's responsibility to maintain accurate dispensing records. Respondent's failure to do so further supports the conclusion that its recordkeeping is not in compliance with federal law.

Mr. Street's April 2001 audit found shortages of 657 tablets of generic hydrocodone/apap 10/500, 656 tablets of generic hydrocodone/apap 7.5/500, 171 tablets of generic hydrocodone/apap 5/500, and 196 tablets of Lortab 10. Respondent was also short 312 tablets of diazepam 5 mg. and 554 tablets of diazepam 10 mg., 166 tablets of acetaminophen with codeine # 4, and 152 tablets of methadone 40 mg.

Finally, while the April 2002 audit involved only twelve drugs and covered a period of a little more than a year, once again even Mr. Street's figures showed substantial discrepancies. More specifically, Respondent was short 498 tablets of diazepam 10 mg., 754 tablets of generic hydrocodone/apap (7.5/500), and 910 tablets of generic hydrocodone/apap (10/500).

While the ALJ reasoned that these discrepancies ''only represented 2% of the Respondent's business,'' ALJ at 70, they are nonetheless substantial and occurred at each of the three audits. Moreover, having conducted his own audit following the April 2001 DEA visit, Mr. Street was clearly aware that Respondent had serious recordkeeping problems. Yet substantial discrepancies were still found during the subsequent audit even though only twelve drugs were audited. Moreover, at the hearing, Mr. Street offered no evidence to show that he and Respondent had taken corrective action to prevent similar discrepancies from occurring in the future.[57] I therefore also find that Respondent's failure to maintain complete and accurate records of its handling of controlled substances supports an adverse finding under this factor. This factor thus further supports the conclusion that Respondent's registration is ''inconsistent with the public interest.'' 21 U.S.C. 823(f).[58]

Sanction

As found above, Respondent's numerous violations pertaining to its dispensing practices and its failure to maintain complete and accurate records establish a *prima facie* case that its continued registration is ''inconsistent with the public interest'' and that its registration should therefore be revoked. *Id.* Where the Government has made out its *prima facie* case, the burden shifts to the Respondent to show why its continued registration would nonetheless be consistent with the public interest. See, *e.g., Theodore Neujahr*, 65 FR 5680, 5682 (2000); *Service Pharmacy, Inc.*, 61 FR10791, 10795 (1996).

In discussing the appropriate sanction, the ALJ relied largely on her conclusion that the Government had failed to prove that Respondent had improperly dispensed controlled substances. While the ALJ noted Mr. Street's ''bothersome'' conduct in filling the prescriptions which Dr. Watts (the veterinarian) wrote for his personal use, she further reasoned that this conduct had occurred in 1996–97, and that ''the lack of any more recent evidence of similar carelessness,'' does not now support revoking Respondent's registration. ALJ at 78.

Respondent's dispensing violations were not, however, limited to what the ALJ found. Rather, the violations include numerous instances in which it flagrantly violated federal law and regulations by: (1) Dispensing controlled substances to persons clearly engaged in doctor shopping, (2) dispensing controlled substances which were contraindicated to other controlled substances it was also dispensing to the same patient, (3) dispensing controlled substances that were outside of the scope of the prescriber's professional practice, and (4) dispensing various controlled substances in quantities that clearly were excessive and would, with respect to some of the drugs, be toxic if they were taken as prescribed. Moreover, the record contains evidence—specifically, the unlawful dispensings Respondent made to K.P. and P.P.—which occurred shortly before this proceeding was commenced.

In Respondent's favor, there is some evidence that Mr. Street reported four forged prescriptions to the police.[59] Respondent did not, however, submit the actual reports that were filed and the circumstances surrounding these incidents were not established. Moreover, I conclude that the harm to public health and safety caused by Respondent's unlawful dispensings was far greater than the benefits that may have resulted from his reporting of the fraudulent prescriptions.

Most significantly, under Agency precedent, where the Government has proved that a registrant has committed acts inconsistent with the public interest, a registrant must "'present[] sufficient mitigating evidence to assure the Administrator that [it] can be entrusted with the responsibility carried by such a registration.'" *Samuel S. Jackson*, 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller*, 53 FR 21931, 21932 (1988)). Moreover, because ''past performance is the best predictor of future performance,'' *ALRA Labs., Inc.*, v. *DEA*, 54 F.3d 450, 452 (7th Cir. 1995), this Agency has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for its actions and demonstrate that it will not engage in future misconduct. *See Jackson*, 72 FR at 23853; *John H. Kennedy*, 71 FR 35705, 35709 (2006); *Prince George Daniels*, 60 FR 62884, 62887 (1995). *See also Hoxie* v. *DEA*, 419 F.3d at 483 (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor[]'' in the public interest determination).

Here, Respondent has not even acknowledged that it has serious recordkeeping problems, let alone that it committed numerous violations of federal law in dispensing controlled substances. Relatedly, Respondent has presented no evidence that it has reformed its shoddy recordkeeping practices and its abysmal dispensing practices.[60] Accordingly, it has not rebutted the Government's *prima facie* showing that its continued registration ''is inconsistent with the public interest.'' 21 U.S.C. 823(f). I therefore conclude that revocation of its registration is essential to protect the public interest.

[57] I place no weight on the statements of Mr. Pierce and Mr. Street that there was no deliberate diversion of drugs. As found above, Mr. Pierce's affidavit frequently did not even address the shortages that Mr. Street's audits found. Moreover, Mr. Street did not testify that he had investigated any of his employees to determine whether they may have been diverting. Instead, he attributed the discrepancies to human error. As for Mr. Street's assertion that ''if we could have audited both name brand and generic'' versions of a drug, ''they might have balanced out there,'' May 24, 2005 Tr. 144, Mr. Street was not prevented from doing exactly that in his own audits. Mr. Street's testimony that the discrepancies are the result of human error is as much speculation as his assertion that there was no deliberate diversion. In fact, no one knows.

[58] I acknowledge that the state board has not taken any action against Mr. Street or Respondent and that neither Mr. Street nor his pharmacy has been convicted of a crime. My findings regarding Respondent's dispensing and recordkeeping violations, however, greatly outweigh these factors.

[59] The ALJ also reasoned that ''Mr. Street's assistance to the DEA during its audit and his provision to the DEA of all the information and documentation it requested'' was ''a factor to be weighed.'' ALJ at 70. Mr. Street had, however, been served with a warrant prior to each audit. See GXs 4, 6, 9, and 12. Mr. Street's assistance during the audits is thus entitled to only slight weight.

[60] As Respondent's own expert acknowledged, its recognition of drug abusers ''fell short of * * * optimal.'' RX 5–6. Yet Respondent does not even admit that it has a problem.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, BM3913781, issued to the Medicine Shoppe—Jonesborough, be, and it hereby is, revoked. I further order that any pending application of Respondent for renewal or modification of its registration be, and it hereby is, denied. This order is effective February 1, 2008.

Dated: December 13, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–25342 Filed 12–31–07; 8:45 am]

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Proposed Rules

Federal Register

Vol. 73, No. 1

Wednesday, January 2, 2008

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–2007–28348; Directorate Identifier 2007–NM–060–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800 and –900 Series Airplanes

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

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposed airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes. The original NPRM would have required sealing the fasteners on the front and rear spars inside the main fuel tank and on the lower panel of the center fuel tank, inspecting the wire bundle support installation in the equipment cooling system bays to identify the type of clamp installed and determine whether the Teflon sleeve is installed, and doing related corrective actions if necessary. The original NPRM resulted from a design review of the fuel tank systems. This action revises the compliance time for the corrective actions specified in the original NPRM. We are proposing this supplemental NPRM to prevent arcing at certain fuel tank fasteners in the event of a lightning strike or fault current event, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this supplemental NPRM by January 28, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590.

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–2007–28348; Directorate Identifier 2007–NM–060–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.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

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an AD (the ''original NPRM'') for certain Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes. The original NPRM was published in the **Federal Register** on June 5, 2007 (72 FR 30996). The original NPRM proposed to require sealing the fasteners on the front and rear spars inside the main fuel tank and on the lower panel of the center fuel tank, inspecting the wire bundle support installation in the equipment cooling system bays to identify the type of clamp installed and determine whether the Teflon sleeve is installed, and doing related corrective actions if necessary.

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, we have become aware that the compliance time for the corrective actions in the referenced service bulletin, Boeing Alert Service Bulletin 737–57A1279, dated January 24, 2007, is specified incorrectly. Paragraph 1.E. of the service bulletin specifies replacing incorrect clamps within 5 years of the release date on the service bulletin. Paragraph (g) of this supplemental NPRM would require this action before further flight after discovery of the incorrect clamps.

Comments

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

Support for the NPRM

Boeing concurs with the contents of the NPRM.

Request To Revise Compliance Time

Air Transport Association (ATA), on behalf of its member American Airlines (AAL), requests that we revise the proposed compliance time for the sealant application and inspection from 60 months to 72 months. AAL states that its current maintenance schedule might not allow for accomplishment of the proposed actions on all of its

affected airplanes within 60 months. AAL would therefore incur significant costs associated with special maintenance visits to meet the compliance time.

We disagree with the request. In developing an appropriate compliance time for this action, we considered the safety implications, the manufacturer's recommendations, and normal maintenance schedules for most affected operators for the timely accomplishment of the required actions. We have determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to safely operate before the required actions are done. We have not changed the original NPRM regarding this issue. However, according to the provisions of paragraph (h) of this supplemental NPRM, we may approve requests to adjust the compliance time if the request includes data that prove that a different compliance time would provide an acceptable level of safety.

Request To Approve Alternative Part Numbers and Other Specifications

ATA and AAL request that we revise the original NPRM to allow alternatives to parts and other specifications identified in Alert Service Bulletin 737–57A1279. AAL states that including an option to choose among multiple vendors or specifications should reduce any part availability issues for the operator.

We disagree with the request. We understand that, when developing service information, Boeing tries to identify alternative parts and other specifications to give operators as many options as possible. We review those options when we approve the service information. AAL did not make any specific proposals for alternative specifications. We need to approve the use of all such substitutions to ensure that the unsafe condition is adequately addressed. We have not changed this supplemental NPRM regarding this issue. However, paragraph (h) of this supplemental NPRM provides operators the opportunity to request alternative methods of compliance if data are presented that prove that the proposed options will provide an acceptable level of safety.

Request To Revise Cost Estimate

ATA and AAL request that we revise the proposed cost estimate to reflect additional work that might be necessary to comply with the proposed AD. First, AAL states that the original NPRM provides no costs for open/close actions, although the proposed actions might not always be accomplished at the same time as other maintenance work that involves similar open/close actions (removing A/C packs, opening wing fuel tanks, and deploying Krueger Flaps). To ensure timely compliance, AAL suggests that an additional 42.5 hours per airplane might be necessary for open/close actions. Second, AAL states that the NPRM provides no costs for clamp/sleeve replacement, although an additional 58 hours per airplane might be necessary for this action (depending on the inspection results).

We disagree with the request to revise the cost estimate. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, or the costs of ''on-condition'' actions such as repairs (that is, actions needed to correct an unsafe condition). We have not changed the supplemental NPRM regarding this issue.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

The compliance time for one of the corrective actions discussed above expands the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Differences Between the Supplemental NPRM and the Service Bulletin

As stated previously, where the service bulletin specifies a compliance time for replacing incorrect clamps within 5 years after the date on the service bulletin, this supplemental NPRM would require this action before further flight after discovery of the incorrect clamps.

Costs of Compliance

There are about 1,754 airplanes of the affected design in the worldwide fleet; of these, 645 airplanes are U.S. registered. The following table provides the estimated costs for U.S. operators to comply with this supplemental NPRM, at an average hourly labor rate of $80.

ESTIMATED COSTS

Action	Group	Work hours	Average hourly labor rate	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Sealant application	1	62	$80	$4,960	586	$2,906,560
	2	28	80	2,240	44	98,560
	3	28	80	2,240	15	33,600
Inspection	1	3	80	240	586	140,640
	2	3	80	240	44	10,560
	3	2	80	160	15	2,400

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or

on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–28348; Directorate Identifier 2007–NM–060–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 28, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 737–600, –700, –700C, –800 and –900 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–57A1279, dated January 24, 2007.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent arcing at certain fuel tank fasteners in the event of a lightning strike or fault current event, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Fastener Sealant

(f) Within 60 months after the effective date of this AD: Seal the fasteners on the front and rear spars inside the main fuel tank and on the lower panel of the center fuel tank, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1279, dated January 24, 2007.

Inspection

(g) Within 60 months after the effective date of this AD: Perform a general visual inspection of the wire bundle support installation in the equipment cooling system bays to identify the type of clamp installed, and determine whether the Teflon sleeve is installed. Do these actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1279, dated January 24, 2007. Do all applicable corrective actions before further flight in accordance with the service bulletin.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on December 20, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–25477 Filed 12–31–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0037; Directorate Identifier 2007–NE–41–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd. & Co. KG. (RRD) TAY 650–15 Turbofan Engines

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) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI states the following:

> Strip results from some of the engines listed in the applicability section of this directive revealed excessively corroded low pressure turbine discs stage 2 and stage 3. The corrosion is considered to be caused by the environment in which these engines are operated. Following a life assessment based on the strip findings it is concluded that inspections for corrosion attack are required. The action specified by this AD is intended to avoid a failure of a low pressure turbine disk stage 2 or stage 3 due to potential corrosion problems which could result in uncontained engine failure and damage to the airplane.

We are proposing this AD to detect corrosion that could cause stage 2 or stage 3 disk of the low pressure turbine to fail and result in an uncontained failure of the engine.

DATES: We must receive comments on this proposed AD by February 1, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.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 the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803;

e-mail: *jason.yang@faa.gov;* telephone (781) 238–7747; fax (781) 238–7199.

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–2007–0037; Directorate Identifier 2007-NE–41-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://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2006–0288, dated September 15, 2006, to correct an unsafe condition for the specified products. The EASA AD states:

> Strip results from some of the engines listed in the applicability section of this directive revealed excessively corroded low pressure turbine discs stage 2 and stage 3. The corrosion is considered to be caused by the environment in which these engines are operated. Following a life assessment based on the strip findings it is concluded that inspections for corrosion attack are required. The action specified by this AD is intended to avoid a failure of a low pressure turbine disk stage 2 or stage 3 due to potential corrosion problems which could result in uncontained engine failure and damage to the airplane.

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

Relevant Service Information

RRD has issued Alert Service Bulletin No. TAY–72–A1524, Revision 1, dated September 1, 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 Germany, and is approved for operation in the United States. Under this bilateral airworthiness agreement, the EASA has kept the FAA informed of the situation described above. We have examined the findings of the EASA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about two engines installed on airplanes of U.S. registry. We also estimate that it would take about 1.0 work-hours per product to inspect the disk, and that the average labor rate is $80 per work-hour. If corrosion is found, we estimate that it would take about 2.0 work-hours to replace the disk. Required parts would cost about $40,000 per product. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $80,480. Our cost estimate is exclusive of possible warranty coverage.

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:

Rolls-Royce Deutschland Ltd & Co KG (RRD) (formerly Rolls-Royce plc, Derby, England): Docket No. FAA–2007–0037; Directorate Identifier 2007–NE–41–AD.

Comments Due Date

(a) We must receive comments by February 1, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to RRD TAY 650–15 turbofan engines that have a serial number listed in Table 1 of this AD, and low pressure turbine module M05300AA installed. These engines are installed on, but not limited to, Fokker F28 Mark 0100 airplanes.

TABLE 1.—AFFECTED TAY 650–15 ENGINES BY SERIAL NUMBER

Engine serial number
17251
17255
17256
17273
17275
17280
17281
17282
17300
17301
17327
17332
17365
17393
17437
17443
17470
17520

TABLE 1.—AFFECTED TAY 650–15 ENGINES BY SERIAL NUMBER—Continued

Engine serial number
17521
17523
17539
17542
17556
17561
17562
17563
17580
17581
17612
17618
17635
17637
17645
17661
17686
17699
17701
17702
17736
17737
17738
17739
17741
17742
17808

Reason

(d) Strip results from some of the engines listed in the applicability section of this directive revealed excessively corroded low pressure turbine discs stage 2 and stage 3. The corrosion is considered to be caused by the environment in which these engines are operated. Following a life assessment based on the strip findings it is concluded that inspections for corrosion attack are required. The action specified by this AD is intended to avoid a failure of a low pressure turbine disk stage 2 or stage 3 due to potential corrosion problems which could result in uncontained engine failure and damage to the airplane.

We are proposing this AD to detect corrosion that could cause stage 2 or stage 3 disk of the low pressure turbine to fail and result in an uncontained failure of the engine.

Actions and Compliance

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

(1) Prior to accumulating 11,700 flight cycles (FC) since new, and thereafter at intervals not exceeding 11,700 FC of the engine, inspect the low pressure turbine discs stage 2 and stage 3 for corrosion in accordance with Rolls-Royce Deutschland Non-Modification Alert Service Bulletin TAY–72–A1524, Revision 1.

(2) For engines that already exceed 11,700 FC on the effective date of this AD, perform the inspection within 90 days after the effective date of this AD.

(3) When, during any of the inspections as required by paragraph (e)(1) of this directive, corrosion is found, replace the affected parts using the rejection criteria described in the Rolls-Royce TAY 650 Engine Manual—E-TAY–3RR.

Other FAA AD Provisions

(f) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) Refer to EASA Airworthiness Directive 2006–0288, dated September 15, 2006, and RRD Alert Service Bulletin TAY–72–A1524, Revision 1, dated September 1, 2006, for related information.

(h) Contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jason.yang@faa.gov;* telephone (781) 238–7747; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on December 26, 2007.

Peter A. White,

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

[FR Doc. E7–25457 Filed 12–31–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24145; Directorate Identifier 2006–NE–06–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–45 and CF6–50 Series Turbofan Engines

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

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This supplemental NPRM revises an earlier proposed airworthiness directive (AD), applicable to certain General Electric Company (GE) CF6–45 and CF6–50 series turbofan engines. That proposed AD would have required inspecting and reworking certain forward and aft centerbodies of the long fixed core exhaust nozzle (LFCEN) assembly. That proposed AD resulted from reports of separation of the forward and aft centerbodies of the LFCEN assembly due to high-imbalance engine conditions. This supplemental NPRM revises the proposed AD to add one engine model, and by replacing the LFCEN instead of repairing the centerbodies. This proposed AD results from the engine manufacturer issuing new service information. We are proposing this AD to prevent the forward and aft centerbody of the LFCEN assembly from separating, leading to additional damage to the airplane.

DATES: We must receive any comments on this proposed AD by February 19, 2008.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

You can get the service information identified in this proposed AD from General Electric Company via GE-Aviation, Attn: Distributions, 111 Merchant St., Room 230, Cincinnati, Ohio 45246, telephone (513) 552–3272; fax (513) 552–3329.

FOR FURTHER INFORMATION CONTACT: Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *robert.green@faa.gov*; telephone (781) 238–7754; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–24145; Directorate Identifier 2006–NE–06–AD'' in the subject line 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://www.regulations.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 the Web site, anyone can find and read the comments in any of our dockets,

including, if provided, 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).

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.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 the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

On March 27, 2006, we issued a proposal to amend part 39 of the Code of Federal Regulations (14 CFR part 39) to add an AD, applicable to GE CF6–45 and –50 series turbofan engines. The proposed AD published as an NPRM in the **Federal Register** on March 31, 2006 (71 FR 16246). That NPRM proposed to require reworking the forward and aft centerbodies to add doublers, larger nuts and bolts, and higher strength corrosion resistant nut plates. That rework would be required the next time the forward centerbody and aft centerbody are removed from the engine after the effective date of this proposed AD.

Since we issued that NPRM, we determined that the referenced GE rework instructions in GE service bulletin (SB) No. CF6–50 S/B 78–0242 were incompatible with the existing repair in the Engine Manual. GE subsequently superseded SB No. CF6–50 S/B 78–0242 with SB No. GE CF6–50 S/B 78–0244, which corrected the error. We also found that we didn't specify the CF6–50A model engine in the Applicability of the proposed AD. We added the CF6–50A engine model to the Applicability of the proposed AD. Because we expanded the population of affected engines by adding the CF6–50A model, this supplemental NPRM reopens the comment period to include the CF6–50A engine model and references the new rework instructions.

This condition, if not corrected, could result in the forward and aft centerbody of the LFCEN assembly separating, leading to additional damage to the airplane.

Comments

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

Request for Continued Operational Serviceability Limits

One commenter asks us to provide continued-operation serviceability limits in terms of flight cycles or flight hours and a maximum allowable crack length to allow operators to schedule removing and installing the LFCEN if a crack is found during an in-service, line station inspection. The commenter states that specifying continued-operation serviceability limits will preclude unscheduled maintenance and costly downtime. We don't agree that we should provide continued-operation serviceability limits in this proposed AD. An operator's approved maintenance plan should define the continued-operation serviceability criteria. We didn't change the proposed NPRM.

Request To Remove Requirement To Modify LFCEN to SB CF6–50 S/B 78–0242

Atlas Air asks us to remove the requirement to use GE SB No. CF6–50 S/B 78–0242 to modify the LFCEN. Atlas Air believes that they can maintain an equivalent level of safety by modifying the forward and aft centerbody as specified in GE SB No. CF6–50 S/B 78–0216, Revision 1, dated October 23, 1987, and adhering to the torque requirements for the aft centerbody bolts as specified in GE SB No. CF6–50 S/B 78–0241, dated January 7, 2003. Atlas Air notes that after the OEM introduced SB No. CF6–50 S/B 78–0216 Revision 1, which instituted the Sixteen-bolt Forward and Aft Centerbody Configuration, 22 events were recorded. But, the OEM has not provided data as to how many of the 22 events occurred on centerbodies modified using only SB No. CF6–50 S/B 78–0216, Revision 1. Atlas Air also notes that no events of separations of the forward and aft centerbody have occurred since the OEM introduced the increased torque requirements for the forward-to-aft centerbody joint bolts.

We don't agree. Analysis and component tests following release of GE SB No. CF6–50 S/B 78–0216 and SB No. CF6–50 S/B 78–0241 identified several other design shortcomings at fan blade-out imbalance loads. Improvements released through GE SB No. CF6–50 S/B 78–0242 (and subsequently GE SB No. CF6–50 S/B 78–0244) addressed those design concerns. GE SB No. CF6–50 S/B 78–0216 and SB No. CF6–50 S/B 78–0241 don't address fully the identified LFCEN forward-to-aft centerbody separation issues. Incorporating the modifications defined in GE SB No. CF6–50 S/B 78–0244 would preclude the need to require repetitive on-wing inspections. We didn't change the proposed NPRM.

Request To Change the Compliance Time

Atlas Air proposes that we change the compliance time for modifying the forward and aft centerbody as specified in GE SB No. CF6–50 S/B 78–0242 from ''the next time the forward and aft centerbody is removed from the engine'' to ''each time the forward or aft centerbody is removed and routed for repair.'' Atlas Air states that the requirement to modify the forward and aft centerbody each time they remove an engine will increase the number of spare centerbodies needed. Atlas Air calculates the need for an additional five forward and aft centerbodies at an additional cost of $696,960.

We don't agree. Incorporating the GE SB No. CF6–50 S/B 78–0244 modifications when the centerbodies are repaired for unserviceable conditions would extend the compliance period unreasonably. The intent of the original compliance recommendation was to align and execute the modifications with engine refurbishments. The intent of the hard-time compliance period recommendation in this superseding NPRM is to complete the modifications within the same time period as the original engine removal recommendations. We didn't change the proposed NPRM.

Request To Change the Costs of Compliance

Atlas Air also believes that we underestimated the cost impact of the proposed rule. Atlas Air uses third party labor and does not agree that the $80 per hour rate is the true industry average. Atlas Air also observes that we do include the cost of spare centerbodies that would be required to support the compliance requirements of this rule. Atlas Air used a figure of $100 per hour in their subsequent cost calculation and included required spare parts in their projected compliance costs.

We don't agree. We use the average labor rate established by the Office of Aviation Policy, Plans, and Management Analysis (APO) for estimating the projected cost impact of ADs. We don't project additional costs associated with spare parts, because ADs address an unsafe condition in a product (in this case an engine) and the unsafe

condition doesn't exist until the spare parts are on the engine and the engine is in service.

However, GE made corrections to SB No. CF6–50 S/B 78–0244, dated July 30, 2007, that included a revision of the projected labor work-hours to complete the modification. GE SB No. CF6–50 S/B 78–0242, dated September 26, 2005, cited 22 work-hours to complete the modification. That was for one centerbody half. The total labor work-hours to modify both centerbodies are 44 work-hours, which is cited in GE SB No. CF6–50 S/B 78–0244, dated July 30, 2007. We changed the Costs of Compliance section in the AD to reflect 44 work-hours per product.

Request To Change the Compliance Times

One commenter, FedEx, suggests a hard-time limit of 30 months after the effective date of the proposed AD to modify all LFCEN assemblies in accordance with GE SB No. CF6–50 S/B 78–0242 (subsequently superseded by GE SB No. CF6–50 S/B 78–0244) instead of when the centerbodies are removed when an engine is taken off wing. FedEx believes that the requirement to perform the modification at the next engine change will create an undue burden on line maintenance operations and prolong completing the modifications. Spare engines ship without the LFCEN assembly which is typically transferred to the new engine from the old engine at engine replacement. FedEx states that, under the requirements in the current NPRM, operators will have to pre-position spare LFCEN assemblies with spare engines to remote outstations. This requirement and additional logistics will unduly increase operator spare cost and cost of out of service aircraft. FedEx contends that a hard-time compliance limit will relieve operations from the increased logistics and spare costs and accelerate completion of the modification. With the current requirement to complete the modification when the LFCEN is removed from the engine, accomplishment could take more than 4 years. A fixed time of 30 months, versus at next engine removal, would allow operators to control the modifications at heavy maintenance checks and expedite completion of the modifications directed by this proposed AD.

We partially agree. We agree that a hard-time completion recommendation works better than an engine removal basis for the centerbody rework. We don't agree that 30 months is the appropriated compliance period. We revised the proposed NPRM accordingly, citing a 42 month compliance period. The 42 month limit is based on the CF6–50 average time-on-wing performance and annual utilization.

Request for a Grace Period

Two commenters, the Air Transport Association and Northwest Airlines, request a grace period of 12 months after the effective date of the proposed AD to acquire and modify spare forward and aft centerbodies. The commenters state that the available number of modified spare centerbody assemblies is extremely low and the grace period for provisioning would avoid extended aircraft-on-ground situations. We don't agree that a grace period is necessary, given our response to the previous comment. We didn't change the proposed NPRM.

Differences Between the Service Bulletin and the Component Maintenance Manual Repair Procedure

Two commenters identified issues with incorporating GE SB No. CF6–50 S/B 78–0242, dated September 26, 2005.

One commenter, Air Nippon Airways, requests that the GE SB recommend the CMM 78–11–02 repair modification for the forward centerbodies and that they be reflected in the FAA AD. Air Nippon Airways notes that the fastener locations on the forward centerbody aft doubler and aft doubler splices defined by GE SB No. CF6–50 S/B 78–0242 and GE Repair Document (RD) 250–206–S1 are different than those defined by the corresponding Component Maintenance Manual (CMM) repair. The aft doubler and aft doubler splices could not be installed on forward centerbodies that had been repaired in accordance with the CMM 78–11–02 Repair 001. In addition, the band doubler specified by the GE SB was already required with the CMM repair. We agree. ANA is correct in their statement that the GE SB No. CF6–50 S/B 78–0242, dated September 26, 2005, and CMM instructions were incompatible. GE subsequently superseded SB No. CF6–50 S/B 78–0242, dated September 26, 2005, with GE SB No. CF6–50 S/B 78–0244, dated July 30, 2007, which corrects the error by referencing the pre-existing repair for modifying the forward centerbody. We changed the proposed NPRM references to reflect the corrected service bulletin instructions.

One commenter, Airbus, reports that since release of the NPRM, docket No. FAA–2007–24145 (Directorate identifier 2006–NE–06–AD), operators report having difficulties implementing GE SB No. CF6–50 S/B 78–0242, dated September 26, 2005, due to a parallel spot-weld repair in Engine Manual Repair 78–11–02–300–001. That repair incorporates an aft joint doubler that interferes with the repair required by GE SB No. CF6–50 S/B 78–0242, dated September 26, 2005. Airbus notes that GE was revising SB No. CF6–50 S/B 78–0242, dated September 26, 2005, to define the proper doublers, update the repair, and contact the service bulletin. Airbus asks if we were informed of this situation and whether it is planned to postpone or review the current proposed rulemaking.

We were aware of the identified issues with the original service bulletin recommendations and that GE was revising SB No. CF6–50 S/B 78–0242, dated September 26, 2005. This proposed AD references the revised modifications released by GE SB No. CF6–50 S/B 78–0244, dated July 30, 2007. This proposed AD addresses those accomplishment instruction changes, and address the compliance recommendations proposed by FedEx, the ATA, and Northwest Airlines. We didn't change the proposed NPRM.

Relevant Service Information

We have reviewed and approved the technical contents of GE SB No. CF6–50 S/B 78–0244, dated July 30, 2007, that identifies disassembly, inspection, rework, and reassembly procedures for the forward and aft centerbodies.

Differences Between the Proposed AD and the Service Information

GE SB No. CF6–50 S/B 78–0244, dated July 30, 2007 requires reworking the forward and aft centerbodies when the centerbodies are removed from the engine. This proposed NPRM requires replacing the centerbodies with centerbodies that were modified using the Accomplishment Instructions, Section 3, of GE SB No. CF6–50 S/B 78–0244, dated July 30, 2007, within 42 months of the effective date of the proposed AD.

FAA's Determination and Requirements of the Proposed AD

We evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which will require replacing certain forward and aft centerbodies with new or modified forward and aft centerbodies. These replacements are required within 42 months after the effective date of this proposed AD. The proposed AD would require you to use the service information described previously to modify the forward and aft centerbodies before assembling them to the engine.

Costs of Compliance

We estimate that this proposed AD would affect 379 GE CF6–45 and CF6–50 series turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 44 work hours per engine to perform the proposed actions, and that the average labor rate is $80 per work hour. Required parts would cost about $11,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $2,802,360.

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. Would 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. 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

Under the authority delegated to me by the Administrator, the Federal Aviation Administration 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 airworthiness directive:

General Electric Company: Docket No. FAA–2006–24145; Directorate Identifier 2006–NE–06–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by February 19, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–45A, CF6–45A2, CF6–50A, CF6–50C, CF6–50CA, CF6–50C1, CF6–50C2, CF6–50C2B, CF6–50C2D, CF6–50E, CF6–50E1, CF6–50E2, and CF6–50E2B series turbofan engines with long fixed core exhaust nozzle (LFCEN) assembly forward centerbody, part number (P/N) 1313M55G01 or G02, P/N 9076M28G09 or G10, and aft centerbody P/N 1313M56G01 or 9076M46G05, installed. These engines are installed on, but not limited to, Airbus A300 series, Boeing 747 series, McDonnell Douglas DC–10 series, and DC–10–30F (KC–10A, KDC–10) airplanes.

Unsafe Condition

(d) This AD results from reports of separation of LFCEN assembly forward and aft centerbodies, due to high imbalance engine conditions. We are issuing this AD to prevent the forward and aft centerbody of the LFCEN assembly from separating, leading to additional damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within 42 months after the effective date of this AD, unless the actions have already been done.

(f) Replace the forward centerbody, P/N 1313M55G01 or G02, P/N 9076M28G09 or G10, and aft centerbody, P/N 1313M56G01 or 9076M46G05 with a forward and aft centerbody that have been modified using with the Accomplishment Instructions, Section 3, of GE service bulletin No. CF6–50 S/B 78–0244, dated July 30, 2007.

Alternative Methods of Compliance

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

Related Information

(h) Contact Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *robert.green@faa.gov*; telephone (781) 238–7754; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on December 17, 2007.

Peter A. White,

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

[FR Doc. E7–25458 Filed 12–31–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0372; Directorate Identifier 2007–NM–164–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A., (CASA) Model C–212 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 that would supersede an existing AD. 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:

On 23 November 2006, Emergency Airworthiness Directive (EAD) Nr. (number) 2006–0351–E was published requiring an inspection to be performed on C–212 aeroplanes having been used for Maritime Patrol or other similar low altitude operations, due to the fact that, after initial examination of the evidences of a recent C–212 Maritime Patrol aircraft accident, cracks had been found in the centre wing lower skin at STA Y=1030. At the time of the accident, the aircraft had accumulated 17,000 flight hours and 7,300 flight cycles. The cracks were suspected to be caused by fatigue.

A more detailed examination in the laboratory, led to think that the initiation of the fatigue cracks was produced by fretting, and EAD 2006–0365–E, superseding EAD

2006–0351–E, was published on 4 December 2006 to address the new situation.

Further examination in the laboratory has allowed to establish that crack initiation was due to fatigue and the fretting was posterior.

The above mentioned cracks, if not timely detected, could lead to reduced structural integrity of the aircraft.

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 February 1, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.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: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1112; 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–2007–0372; Directorate Identifier 2007–NM–164–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://www.regulations.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

On February 16, 2007, we issued AD 2007–05–01, Amendment 39–14962 (72 FR 8610, February 27, 2007). That AD required actions intended to address an unsafe condition on the products listed above.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency Airworthiness Directive (EAD) 2007–0108-E, dated April 18, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

On 23 November 2006, Emergency Airworthiness Directive Nr. (number) 2006–0351-E was published, requiring an inspection to be performed on C–212 aeroplanes having been used for Maritime Patrol or other similar low altitude operations, due to the fact that, after initial examination of the evidences of a recent C–212 Maritime Patrol aircraft accident, cracks had been found in the centre wing lower skin at STA Y=1030. At the time of the accident, the aircraft had accumulated 17,000 flight hours and 7,300 flight cycles. The cracks were suspected to be caused by fatigue.

A more detailed examination in the laboratory, led to think that the initiation of the fatigue cracks was produced by fretting, and EAD 2006–0365-E, superseding EAD 2006–0351-E, was published on 4 December 2006 to address the new situation.

Further examination in the laboratory has allowed to establish that crack initiation was due to fatigue and the fretting was posterior. Additionally, given that some operators were reporting difficulties in performing the required inspections, a new procedure has been defined using High Frequency Eddy Currents. Finally, an inspection interval has been established to make the required inspections repetitive in the interim until a definitive solution is available.

The subject element is identified in Ref. 1 (CASA C–212 Supplemental Inspection Document (SID) C–212–PV–02–SID) as a Principal Structural Element (PSE) with No. 57.212.06 and requested to be inspected at a threshold of 20,000 landings (subject to some operational constraints defined in Ref. 1) in accordance with the inspection method and sequence described in Ref. 2 (CASA C–212 Supplemental Inspection Procedures (SIP) C–212–PV–02–SIP), Section 57–10–03.

Ref. 1 document was made mandatory by DGAC-Spain Airworthiness directive Nr. 02/88 (current status of that AD is revision 3, dated 4 February 2004).

Inspection threshold as per AD 02/88 Rev. 3 remains valid and relevant inspections have to be performed in addition to the requirements of this Emergency Airworthiness Directive (EAD).

The above mentioned cracks, if not timely detected, could lead to reduced structural integrity of the aircraft. This EAD [which supersedes EASA EAD 2006–0365–E], is intended to ensure that no other C–212 aircraft could be affected by this problem, by mandating a one time inspection of the subject area and a repetitive inspection thereafter, until the moment a definitive design solution will be available, in accordance with the requirements under the paragraph ''Compliance'' of this EAD.

An additional inspection procedure, by using High Frequency Eddy Currents, has been introduced, which should be able to detect cracks with higher reliability.

The corrective action includes repetitive inspections for cracks, and repair if necessary.

We clarified the compliance times specified in paragraphs (f)(1)(i) and (f)(2)(i) of the existing AD to specify those times in terms of a threshold (e.g., 5,600 total flight hours, 2,400 total landings) and a grace period (e.g., within 6 months), whichever is latest. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EADS–CASA has issued All Operator Letter 212–018, Revision 2, dated March 20, 2007. 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 33 products of U.S. registry. We also estimate that it would take about 8 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 $21,120, or $640 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 removing Amendment 39–14962 (72 FR 8610, February 27, 2007) and adding the following new AD:

Construcciones Aeronauticas, S.A. (CASA): Docket No. FAA–2007–0372; Directorate Identifier 2007–NM–164–AD.

Comments Due Date

(a) We must receive comments by February 1, 2008.

Affected ADs

(b) The proposed AD supersedes AD 2007–05–01, Amendment 39–14962.

Applicability

(c) This AD applies to Construcciones Aeronauticas, S.A., (CASA) Model C–212 airplanes; all series, all serial numbers; certificated in any category.

Subject

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

Reason

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

On 23 November 2006, Emergency Airworthiness Directive Nr. (number) 2006–0351–E was published, requiring an inspection to be performed on C–212 aeroplanes having been used for Maritime Patrol or other similar low altitude operations, due to the fact that, after initial examination of the evidences of a recent C–212 Maritime Patrol aircraft accident, cracks had been found in the centre wing lower skin at STA Y=1030. At the time of the accident, the aircraft had accumulated 17,000 flight hours and 7,300 flight cycles. The cracks were suspected to be caused by fatigue.

A more detailed examination in the laboratory, led to think that the initiation of the fatigue cracks was produced by fretting, and EAD 2006–0365–E, superseding EAD 2006–0351–E, was published on 4 December 2006 to address the new situation.

Further examination in the laboratory has allowed to establish that crack initiation was due to fatigue and the fretting was posterior. Additionally, given that some operators were reporting difficulties in performing the required inspections, a new procedure has been defined using High Frequency Eddy Currents. Finally, an inspection interval has been established to make the required inspections repetitive in the interim until a definitive solution is available.

The subject element is identified in Ref. 1 (CASA C–212 Supplemental Inspection Document (SID) C–212–PV–02–SID) as a Principal Structural Element (PSE) with No. 57.212.06 and requested to be inspected at a threshold of 20,000 landings (subject to some operational constraints defined in Ref. 1) in accordance with the inspection method and sequence described in Ref. 2 (CASA C–212 Supplemental Inspection Procedures (SIP) C–212–PV–02–SIP), Section 57–10–03.

Ref. 1 document was made mandatory by DGAC-Spain Airworthiness directive Nr. 02/88 (current status of that AD is revision 3, dated 4 February 2004).

Inspection threshold as per AD 02/88 Rev. 3 remains valid and relevant inspections have to be performed in addition to the requirements of this Emergency Airworthiness Directive (EAD).

The above mentioned cracks, if not timely detected, could lead to reduced structural integrity of the aircraft. This EAD [which supersedes EASA EAD 2006–0365–E], is intended to ensure that no other C–212 aircraft could be affected by this problem, by mandating a one time inspection of the subject area and a repetitive inspection thereafter, until the moment a definitive design solution will be available, in accordance with the requirements under the paragraph ''Compliance'' of this EAD.

An additional inspection procedure, by using High Frequency Eddy Currents, has been introduced, which should be able to detect cracks with higher reliability.
The corrective action includes repetitive inspections for cracks, and repair if necessary.

Restatement of Requirements of AD 2007–05–01:

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

(1) For airplanes used for maritime operations and all other airplanes on which the operator cannot positively determine that the airplanes have not been flown more than ten percent of flights at altitudes below 3,000 feet as of March 14, 2007 (the effective date of AD 2007–05–01): Perform a Non-Destructive Inspection (NDI) and a complementary NDI for cracks at the applicable time specified in paragraph (f)(1)(i), (f)(1)(ii), or (f)(1)(iii) of this AD. Do the inspections as defined in EADS–CASA All Operator Letter 212–018, Revision 1, dated December 1, 2006; or Revision 2, dated March 20, 2007. As of the effective date of this AD, only Revision 2 may be used. –

Note 1: For the purposes of this AD, the term ''maritime operations'' is defined as airplanes which are used for monitoring certain areas of water.

(i) For airplanes having accumulated 5,600 flight hours or less, and 2,400 landings or less as of March 14, 2007: Perform the inspections before the accumulation of 5,600 total flight hours, or before the accumulation of 2,400 total landings, or within 6 months after March 14, 2007, whichever occurs latest.

(ii) For airplanes having accumulated more than 5,600 flight hours but less than or equal to 8,000 flight hours, or more than 2,400 landings but less than or equal to 3,600 landings, as of March 14, 2007: Perform the inspections before the accumulation of 200 flight hours or 100 landings after March 14, 2007, whichever occurs first.

(iii) For airplanes having accumulated more than 8,000 flight hours or more than 3,600 landings as of March 14, 2007: Perform the inspections within 14 days after March 14, 2007.

(2) For airplanes other than those identified in paragraph (f)(1) of this AD: Perform the NDIs at the applicable time specified in paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this AD. Do the inspections as defined in EADS–CASA All Operator Letter 212–018, Revision 1, dated December 1, 2006; or Revision 2, dated March 20, 2007. As of the effective date of this AD, only Revision 2 may be used.

(i) For airplanes having accumulated 10,000 total flight hours or less, and 10,000 total landings or less as of March 14, 2007: Perform the inspections before the accumulation of 10,000 total flight hours, or before the accumulation of 10,000 total landings, or within 6 months after March 14, 2007, whichever occurs latest.

(ii) For airplanes having accumulated more than 10,000 flight hours but less than or equal to 15,000 flight hours, or more than 10,000 landings but less than or equal to 15,000 landings, as of March 14, 2007: Perform the inspections before the accumulation of 200 flight hours or 100 landings after March 14, 2007, whichever occurs first.

(iii) For airplanes having accumulated more than 15,000 flight hours or more than 15,000 landings as of March 14, 2007: Perform the inspections within 14 days after March 14, 2007.

New Requirements of This AD: Actions and Compliance

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

(1) For airplanes identified in paragraph (f)(1) of this AD that have accumulated 5,600 flight hours or less, and 2,400 landings or less as of the effective date of this AD: Perform the inspections at the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD. Do the inspections as defined in EADS–CASA All Operator Letter 212–018, Revision 2, dated March 20, 2007.

(i) At the later of the times specified in paragraphs (g)(1)(i)(A) and (g)(1)(i)(B) of this AD: Perform a high frequency eddy current (HFEC) NDI for cracks.

(A) Within 200 flight hours or 100 landings after the effective date of this AD, whichever occurs first.

(B) Before the accumulation of 5,600 total flight hours or 2,400 total landings, whichever occurs first.

(ii) Repeat the inspections required by paragraphs (f)(1) and (g)(1)(i) of this AD before the accumulation of 8,000 total flight hours or 3,600 total landings, whichever occurs first, and thereafter at intervals not to exceed 600 flight hours or 250 landings, whichever occurs first.

(2) For airplanes identified in paragraph (f)(1) of this AD that have accumulated more than 5,600 flight hours but less than or equal to 8,000 flight hours, or more than 2,400 landings but less than or equal to 3,600 landings, as of the effective date of this AD: Perform the inspections at the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD. Do the inspections as defined in EADS–CASA All Operator Letter 212–018, Revision 2, dated March 20, 2007.

(i) Within 200 flight hours or 100 landings after the effective date of this AD, whichever occurs first: Perform a HFEC NDI for cracks.

(ii) Within 600 flight hours or 250 landings, whichever occurs first, after doing the inspection required by paragraph (g)(2)(i) of this AD: Perform the inspections required by paragraphs (f)(1) and (g)(2)(i) of this AD and repeat the inspections thereafter at intervals not to exceed 600 flight hours or 250 landings, whichever occurs first.

(3) For airplanes identified in paragraph (f)(1) of this AD that are not subject to paragraph (g)(1) or (g)(2) of this AD: Perform the inspections at the times specified in paragraphs (g)(3)(i) and (g)(3)(ii) of this AD. Do the inspections as defined in EADS–CASA All Operator Letter 212–018, Revision 2, dated March 20, 2007.

(i) Within 14 days after the effective date of this AD: Perform a HFEC NDI for cracks.

(ii) Within 600 flight hours or 250 landings, whichever occurs first, after doing the inspection required by paragraph (g)(3)(i) of this AD: Perform the inspections required by paragraphs (f)(1) and (g)(3)(i) of this AD and repeat the inspections thereafter at intervals not to exceed 600 flight hours or 250 landings, whichever occurs first.

(4) For airplanes identified in paragraph (f)(2) of this AD that have accumulated 10,000 flight hours or less, and 10,000 landings or less, as of the effective date of this AD: Perform the inspections at the times specified in paragraphs (g)(4)(i) and (g)(4)(ii) of this AD. Do the inspections as defined in EADS–CASA All Operator Letter 212–018, Revision 2, dated March 20, 2007.

(i) Within 200 flight hours or 100 landings after the effective date of this AD, whichever occurs first: Perform a HFEC NDI for cracks.

(ii) Repeat the inspections required by paragraphs (f)(2) and (g)(4)(i) of this AD before the accumulation of 15,000 total flight hours or 15,000 total landings, whichever occurs first, and thereafter at intervals not to exceed 4,500 flight hours or 4,500 landings, whichever occurs first.

(5) For airplanes identified in paragraph (f)(2) of this AD that have accumulated more than 10,000 flight hours but less than or equal to 15,000 flight hours, or more than 10,000 landings but less than or equal to 15,000 landings, as of the effective date of this AD: Perform the inspections at the time specified in paragraphs (g)(5)(i) and (g)(5)(ii) of this AD. Do the inspections as defined in EADS–CASA All Operator Letter 212–018, Revision 2, dated March 20, 2007.

(i) Within 200 flight hours or 100 landings after the effective date of this AD, whichever occurs first: Perform a HFEC NDI for cracks.

(ii) Within 4,500 flight hours or 4,500 landings, whichever occurs first, after doing the inspection required by paragraph (g)(5)(i) of this AD: Perform the inspections required by paragraphs (f)(2) and (g)(5)(i) of this AD. Repeat the inspections thereafter at intervals not to exceed 4,500 flight hours or 4,500 landings, whichever occurs first.

(6) For airplanes identified in paragraph (f)(2) of this AD that are not subject to paragraph (g)(4) or (g)(5) of this AD: Perform the inspections at the time specified in paragraphs (g)(6)(i) and (g)(6)(ii) of this AD. Do the inspections as defined in EADS–CASA All Operator Letter 212–018, Revision 2, dated March 20, 2007.

(i) Within 14 days after the effective date of this AD: Perform a HFEC NDI for cracks.

(ii) Within 4,500 flight hours or 4,500 landings, whichever occurs first, after doing the inspection required by paragraph (g)(6)(i) of this AD: Perform the inspections required by paragraphs (f)(2) and (g)(6)(i) of this AD, and repeat the inspection thereafter at intervals not to exceed 4,500 flight hours or 4,500 landings, whichever occurs first.

(7) If any crack or loose rivet is detected during any inspection required by this AD, before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent). Within 30 days after cracks are detected, or within 30 days after the effective date of this AD, whichever occurs later, send a detailed report of the first inspection findings (both positive and negative) of the inspections required by paragraph (f) of this AD to EADS–CASA for evaluation at the following address: EADS–CASA, Military Transport Aircraft Division, Integrated Customer Services, Technical Services, Avenida de Aragon 404, 28022-Madrid, Spain; telephone 34–91–624–6306; fax 34–91–585–5505; E-mail: MTA, *TechnicalService@casa.eads.net.* In any case, a confirmation of the accomplishment of this inspection is required to be sent to EADS–CASA.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

(1) *Compliance Time:* For certain airplanes, the compliance time required by the MCAI or service information for performing the HFEC inspections is before further flight; however, to avoid inadvertently grounding airplanes, this AD requires performing those inspections within 14 days after the effective date of this AD.

(2) *Repair:* Although the MCAI or service information does not include a repair procedure for cracking, this AD requires the repair of any cracking per the FAA or EASA (or its delegated agent).

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International

Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1112; 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

(i) Refer to MCAI EASA Emergency Airworthiness Directive 2007–0108–E, dated April 18, 2007, and EADS–CASA All Operator Letter 212–018, Revision 2, dated March 20, 2007, for related information.

Issued in Renton, Washington, on December 19, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–25481 Filed 12–31–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0389; Directorate Identifier 2007–NM–222–AD]

RIN 2120–AA64

Airworthiness Directives; Various Transport Category Airplanes Equipped With Auxiliary Fuel Tanks Installed in Accordance With Certain Supplemental Type Certificates

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 various transport category airplanes. This proposed AD would require deactivation of Southeast Aero-Tek, Inc., auxiliary fuel tanks. This proposed AD results from fuel system reviews conducted by the manufacturer, which identified potential unsafe conditions for which the manufacturer has not provided corrective actions. We are proposing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by February 19, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Robert Bosak, Aerospace Engineer, Propulsion and Services Branch, ACE–118A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 460, Atlanta, Georgia 30349; telephone (770) 703–6094; fax (770) 703–6097.

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–2007–0389; Directorate Identifier 2007–NM–222–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.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 FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC) design approval) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to design approval holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in

combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Supplemental Type Certificates (STCs) for Southeast Aero-Tek, Inc., Auxiliary Fuel Tanks

The auxiliary fuel tank STCs on affected airplanes are a double-walled cylindrical type design. The double-walled cylindrical tanks use pneumatic air pressure to empty into the airplane's center wing tank. All auxiliary tanks use some type of electrical fuel quantity indication system (FQIS), flight deck control and annunciation panels, float level switches, valves and venting systems, electrical wiring connections in the dry bay area, and electrical bonding methods.

FAA's Findings

During the SFAR 88 safety assessment, it was determined that the Southeast Aero-Tek, Inc., FQIS and float level switch did not meet intrinsically safe electrical energy levels as described in the guidelines of Advisory Circular (AC) 25.981–1B, ''Fuel Tank Ignition Source Prevention Guidelines.'' Southeast Aero-Tek, Inc., identified potential ignition sources resulting from a combination of single and latent failures for the Southeast Aero-Tek, Inc., fuel tank subsystems. To prevent high electrical energy levels from the FQIS and float level switch from entering the auxiliary fuel tank, we have determined that the appropriate solution for continued use is a combination of actions. First, installing a transient suppression device (TSD) on FQIS and float level switches would be needed. In order to maximize wire separation, the TSD must be installed as close as possible to the points where the FQIS and float level switch wires exit the TSD and enter the auxiliary tank. Other actions might include replacing high-energy FQISs, and float level switches that are impractical for TSD application with intrinsically safe FQISs providing wire separation, conducting a one-time inspection and/or replacing aging float level switch conduit assemblies, periodically inspecting the external dry bay system components and wires, and testing the integrity of bonding resistances.

Southeast Aero-Tek, Inc., has not fully provided the service information required under SFAR 88 that would correct these conditions; therefore, we must mandate the deactivation of all Southeast Aero-Tek, Inc., auxiliary fuel tanks.

If operators do not wish to deactivate their auxiliary fuel tanks, we will consider requests for alternative methods of compliance (AMOCs). The most likely requests would be to allow continued use of the tanks by showing compliance with SFAR 88. This would involve obtaining STCs to modify the auxiliary fuel tank systems and developing maintenance procedures to address the safety issues identified above.

Once an operator has deactivated a tank as proposed by this NPRM, the operator might wish to remove the tank. This would require a separate design approval, if an approved tank removal procedure does not exist.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For this reason, we are proposing this AD, which would require deactivation to prevent usage of auxiliary fuel tanks.

Explanation of Compliance Time

In most ADs, we adopt a compliance time allowing a specified amount of time after the AD's effective date. In this case, however, the FAA has already issued regulations that require operators to revise their maintenance/inspection programs to address fuel tank safety issues. The compliance date for these regulations is December 16, 2008. To provide for coordinated implementation of these regulations and this proposed AD, we are using this same compliance date in this proposed AD.

Costs of Compliance

The following table provides the estimated costs for the 37 U.S.-registered airplanes to comply with this proposed AD. Based on these figures, the estimated costs for U.S. operators could be as high as $239,760 to prepare and report the deactivation procedures, and $133,200 to deactivate tanks.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Individual cost
Report	1	$80	None	$80, per STC.
Preparation of tank deactivation procedure	80	80	None	6,400, per STC.
Physical tank deactivation	30	80	1,200	3,600, per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Various Transport Category Airplanes: Docket No. FAA–2007–0389; Directorate Identifier 2007–NM–222–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 19, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to airplanes, certificated in any category, and equipped with auxiliary fuel tanks installed in accordance with specified supplemental type certificates (STCs), as identified in Table 1 of this AD.

TABLE 1.—AFFECTED AIRPLANES

Airplanes	Auxiliary tank STC(s)
Boeing Model 727–100 series airplanes	ST01587AT.
Boeing Model 727–200 and –200F series airplanes	SA2033NM, SA1474SO
McDonnell Douglas Model DC–9–14 airplanes	SA1334NM
McDonnell Douglas Model DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, and DC–9–32F (C–9A, C–9B) airplanes.	SA1710SO and SA1358NM

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer, which identified potential unsafe conditions for which the manufacturer has not provided corrective actions. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

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.

Report

(f) Within 45 days after the effective date of this AD, submit a report to the Manager, Atlanta Aircraft Certification Office (ACO), FAA. The report must include the information listed in paragraphs (f)(1) and (f)(2) of this AD. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD, and assigned OMB Control Number 2120–0056.

(1) The airplane registration and auxiliary tank STC number installed.

(2) The usage frequency in terms of total number of flights per year and total number of flights per year for which the auxiliary tank is used.

Prevent Usage of Auxiliary Fuel Tanks

(g) On or before December 16, 2008, deactivate the auxiliary fuel tanks, in accordance with a deactivation procedure approved by the Manager of the Atlanta ACO. Any auxiliary tank component that remains on the airplane must be secured and must have no effect on the continued operational safety and airworthiness of the airplane. Deactivation may not result in the need for additional instructions for continued airworthiness.

Note 1: Appendix A of this AD provides criteria that should be included in the deactivation procedure. The proposed deactivation procedures should be submitted to the Manager, Atlanta ACO as soon as possible to ensure timely review and approval.

Note 2: For technical information, contact Randy Smith, President, Southeast Aero-Tek, Inc., 675 Oleander Drive, Merritt Island, Florida 32952; telephone (321) 453–7876; fax (321) 453–7872.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Atlanta 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.

Appendix A—Deactivation Criteria

The auxiliary fuel tank deactivation procedure required by paragraph (g) of this AD should address the following actions.

(1) Permanently drain auxiliary fuel tanks, and clear them of fuel vapors to eliminate the possibility of out-gassing of fuel vapors from the emptied auxiliary tank.

(2) Disconnect all electrical connections from the fuel quantity indication system (FQIS), fuel pumps if applicable, float switches, and all other electrical connections required for auxiliary tank operation, and stow them at the auxiliary tank interface.

(3) Disconnect all pneumatic connections if applicable, cap them at the pneumatic source, and secure them.

(4) Disconnect all fuel feed and fuel vent plumbing interfaces with airplane original equipment manufacturer (OEM) tanks, cap them at the airplane tank side, and secure them in accordance with a method approved by the FAA; one approved method is specified in AC 25–8 Fuel Tank Flammability Minimization. In order to eliminate the possibility of structural deformation during cabin decompression, leave open and secure the disconnected auxiliary fuel tank vent lines.

(5) Pull and collar all circuit breakers used to operate the auxiliary tank.

(6) Revise the weight and balance document, if required, and obtain FAA approval.

(7) Amend the applicable sections of the applicable airplane flight manual (AFM) to indicate that the auxiliary fuel tank is deactivated. Remove auxiliary fuel tank operating procedures to ensure that only the OEM fuel system operational procedures are contained in the AFM. Amend the Limitations Section of the AFM to indicate that the AFM Supplement for the STC is not in effect. Place a placard in the flight deck indicating that the auxiliary tank is deactivated. The AFM revisions specified in

this paragraph may be accomplished by inserting a copy of this AD into the AFM.

(8) Amend the applicable sections of the applicable airplane maintenance manual to remove auxiliary tank maintenance procedures.

(9) After the auxiliary fuel tank is deactivated, accomplish procedures such as leak checks and pressure checks deemed necessary before returning the airplane to service. These procedures must include verification that the airplane FQIS and fuel distribution systems have not been adversely affected.

(10) Include with the operator's proposed procedures any relevant information or additional steps that are deemed necessary by the operator to comply with the deactivation and return the airplane to service.

Issued in Renton, Washington, on December 19, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–25482 Filed 12–31–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0218; Directorate Identifier 92–ANE–56–AD]

RIN 2120–AA64

Airworthiness Directives; Lycoming Engines, Fuel Injected Reciprocating Engines

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) for certain fuel injected reciprocating engines manufactured by Lycoming Engines. That AD currently requires inspection, and replacement if necessary, of externally mounted fuel injector fuel lines. This proposed AD would require the same actions but would add additional engine models, would clarify certain compliance time wording, and would exempt engines that have a Maintenance and Overhaul Manual with an Airworthiness Limitations Section that requires inspection, and replacement if necessary, of externally mounted fuel injector lines. This proposed AD results from Lycoming Engines revising their Mandatory Service Bulletin (MSB) to add new engine models requiring inspection, and from the need to clarify a repetitive inspection compliance time. We are proposing this AD to prevent failure of the fuel injector fuel lines that would allow fuel to spray into the engine compartment, resulting in an engine fire.

DATES: We must receive any comments on this proposed AD by March 3, 2008.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Lycoming Engines, 652 Oliver Street, Williamsport, PA 17701, or go to *http://www.lycoming.textron.com*, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; e-mail: *Norman.perenson@faa.gov*; telephone (516) 228–7337; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2007–0218; Directorate Identifier 92–ANE–56–AD'' in the subject line 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://www.regulations.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 the Web site, anyone can find and read the comments in any of our dockets, including, if provided, 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).

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.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 the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

The FAA proposes to amend 14 CFR part 39 by superseding AD 2002–26–01, Amendment 39–12986 (67 FR 78965, December 27, 2002). That AD requires inspection, and replacement if necessary, of externally mounted fuel injector fuel lines. That AD was the result of the need to ensure that the additional Textron Lycoming fuel injected engine series listed in that final rule, receive the same inspections as series covered by the two previous ADs that were superseded by AD 2002–26–01. That condition, if not corrected, could result in failure of the fuel injector fuel lines allowing fuel to spray into the engine compartment, resulting in an engine fire.

Actions Since AD 2002–26–01 Was Issued

Since AD 2002–26–01 was issued, Lycoming Engines has added new engine models to the list of engines requiring inspection, and replacement if necessary, of externally mounted fuel injector fuel lines. They have also added other new engines that are exempt from this AD, because they have a Maintenance and Overhaul Manual with an Airworthiness Limitations Section that requires inspection, and replacement if necessary, of externally mounted fuel injector lines. These engines are not listed in the revised Lycoming Engines MSB. Also, since AD 2002–26–01 was issued, we found that we need to clarify the repetitive inspection compliance time from ''at each 100-hour inspection'' to ''at intervals of 100 hours time-in-service (not to exceed 110 hours)'', to include engines that are not subject to 100-hour inspections.

Relevant Service Information

We have reviewed and approved the technical contents of Lycoming Engines MSB No. 342E, dated May 18, 2004, which describes procedures for inspecting, and if necessary replacing the fuel injector fuel lines. That MSB supersedes Textron Lycoming MSB No. 342D, MSB No. 342C, MSB No. 342B, Supplement No. 1 to MSB 342B, MSB 342A, and MSB 342.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For that reason, we are proposing this AD, which would supersede AD 2002–26–01 to add additional Lycoming Engines engine models to the applicability of the AD, and to clarify the repetitive inspect compliance time. The proposed AD would require that you do the inspections using the service information described previously.

Costs of Compliance

We estimate that 17,740 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take about 1 work-hour to inspect and replace all lines on a four-cylinder engine, 1.5 work-hours to inspect and replace all lines on a six-cylinder engine, and 2 work-hours to inspect and replace all lines on an eight-cylinder engine, and that the average labor rate is $80 per work hour. Required parts would cost about $484 for a four-cylinder engine, $726 for a six-cylinder engine, and $968 for an eight-cylinder engine. Based on these figures, the total cost per airplane of the proposed AD on U.S. operators is estimated as follows:

- $564 for a four-cylinder engine.
- $846 for a six-cylinder engine.
- $1,128 for an eight-cylinder engine.

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.

Docket Number Change

We are transferring the docket for this AD to the Federal Docket Management System as part of our on-going docket management consolidation efforts. The new Docket No. is FAA–2007–0218. The old Docket No. became the Directorate Identifier, which is 92–ANE–56–AD.

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 AD:

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. Would 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. 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

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–12986 (67 FR 78965, December 27, 2002) and by adding a new airworthiness directive to read as follows:

Lycoming Engines (formerly Textron Lycoming Division, AVCO Corporation): Docket No. FAA–2007–0218; Directorate Identifier 92–ANE–56–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by March 3, 2008.

Affected ADs

(b) This AD supersedes AD 2002–26–01, Amendment 39–12986.

Applicability

(c) This AD applies to fuel injected reciprocating engines manufactured by Lycoming Engines, that incorporate externally mounted fuel injection lines (engines with an ''I'' in the prefix of the engine model designation) as listed in the following Table 1:

TABLE 1.—ENGINE MODELS AFFECTED

Engine	Model
AEIO–320	–D1B, –D2B, –E1B, –E2B
AIO–320	–A1B, –BIB, –C1B
IO–320	–B1A, –B1C, –C1A, –D1A, –D1B, –E1A, –E1B, –E2A, –E2B
LIO–320	–B1A, –C1A
AEIO–360	–A1A, –A1B, –A1B6, –A1D, –A1E, –A1E6, –B1F, –B2F, –B1G6, –B1H, –B4A, –H1A, –H1B
AIO–360	–A1A, –A1B, –B1B
HIO–360	–A1A, –A1B, –B1A, –C1A, –C1B, –D1A, –E1AD, –E1BD, –F1AD, –G1A

TABLE 1.—ENGINE MODELS AFFECTED—Continued

Engine	Model
IO–360	–A1A, –A1B, –A1B6, –A1B6D, –A1C, –A1D, –A1D6, –A2A, –A2B, –A3B6, –A3B6D, –B1B, –B1D, –B1E, –B1F, –B1G6, –B2F, –B2F6, –B4A, –C1A, –C1B, –C1C, –C1C6, –C1D6, –C1E6, –C1F, –C1G6, –C2G6, –F1A, –J1A6D, –M1B, –L2A, –M1A
IVO–360	–A1A
LIO–360	–C1E6
TIO–360	–A1B, –C1A6D
IGO–480	–A1B6
AEIO–540	–D4A5, –D4B5, –D4D5, –L1B5, –L1B5D, –L1D5
IGO–540	–B1A, –B1C
IO–540	–A1A5, –AA1A5, –AA1B5, –AB1A5, –AC1A5, –AE1A5, –B1A5, –B1C5, –C1B5, –C4B5, –C4D5D, –D4A5, –E1A5, –E1B5, –G1A5, –G1B5, –G1C5, –G1D5, –G1E5, –G1F5, –J4A5, –V4A5D, –K1A5, –K1A5D, –K1B5, –K1C5, –K1D5, –K1E5, –K1E5D, –K1F5, K1H5, –K1J5, –K1F5D, –K1G5, –K1G5D, –K1H5, –K1J5D, –K1K5, –K1E5, –K1E5D, –K1F5, –K1J5, –L1C5, –M1A5, –M1B5D, –M1C5, –N1A5, –P1A5, –R1A5, –S1A5, –T4A5D, –T4B5, –T4B5D, –T4C5D, –V4A5, –V4A5D, –W1A5, –W1A5D, –W3A5D
IVO–540	–A1A
LTIO–540	–F2BD, –J2B, –J2BD, –N2BD, –R2AD, –U2A, –V2AD, –W2A
TIO–540	–A1A, –A1B, –A2A, –A2B, –A2C, AE1A5, –AE2A, –AH1A, –AA1AD, –AF1A, –AF1B, –AG1A, –AB1AD, –AB1BD, –AH1A, –AJ1A, –AK1A, –C1A, –E1A, –G1A, –F2BD, –J2B, –J2BD, –N2BD, –R2AD, –S1AD, –U2A, –V2AD, –W2A
TIVO–540	–A2A
IO–720	–A1A, –A1B, –D1B, –D1BD, –D1C, –D1CD, –B1B, –B1BD, –C1B

Engine models in Table 1 are installed on, but not limited to Piper PA–24 Comanche, PA–30 and PA–39 Twin Comanche, PA–28 Arrow, and PA–23 Aztec; Beech 23 Musketeer; Mooney 20, and Cessna 177 Cardinal airplanes.

(d) This AD is not applicable to engines having internally mounted fuel injection lines, which are not accessible.

(e) This AD is not applicable to engines that have a Maintenance and Overhaul Manual with an Airworthiness Limitations Section that requires inspection, and replacement if necessary, of externally mounted fuel injector lines.

Unsafe Condition

(f) This AD results from Lycoming Engines revising their Mandatory Service Bulletin (MSB) to add new engine models requiring inspection, and from the need to clarify a repetitive inspection compliance time. We are issuing this AD to prevent failure of the fuel injector fuel lines that would allow fuel to spray into the engine compartment, resulting in an engine fire.

Compliance

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

Engines That Have Had Initial Inspections

(h) For engines that have had initial inspections in accordance with Textron Lycoming Mandatory Service Bulletin (MSB) No. 342, dated March 24, 1972; Textron Lycoming MSB No. 342A, dated May 26, 1992 Textron Lycoming MSB No. 342B, dated October 22, 1993; Supplement No. 1 to MSB No. 342B, dated April 27, 1999; Textron Lycoming MSB No. 342C, dated April 28, 2000; Textron Lycoming MSB No. 342D, dated July 10, 2001, and Lycoming Engines MSB No. 342E, dated May 18, 2004, inspect in accordance with paragraph (j) of this AD.

Engines That Have Not Had Initial Inspections

(i) For engines that have not had initial inspections previously done in accordance with Textron Lycoming MSB No. 342, dated March 24, 1972; Textron Lycoming MSB No. 342A, dated May 26, 1992; Textron Lycoming MSB No. 342B, dated October 22, 1993; Supplement No. 1 to MSB No. 342B, dated April 27, 1999; Textron Lycoming MSB No. 342C, dated April 28, 2000; Textron Lycoming MSB No. 342D, dated July 10, 2001; or Lycoming Engines MSD No. 342E, dated May 18, 2004, inspect as follows:

(1) For engines that have not yet had any fuel line maintenance done, or have not had any fuel line maintenance done since new or since the last overhaul, inspect in accordance with paragraph (k) of this AD within 50 hours time-in-service (TIS) after the effective date of this AD.

(2) For all other engines, inspect in accordance with paragraph (k) of this AD within 10 hours TIS after the effective date of this AD.

Repetitive Inspections

(j) Thereafter, inspect at intervals of 100 hours TIS (not to exceed 110 hours), at each engine overhaul, and after any maintenance has been done on the engine where any clamp (or clamps) on a fuel injector line (or lines) has been disconnected, moved, or loosened, inspect in accordance with paragraph (k) of this AD.

Inspection Criteria

(k) Inspect the fuel injector fuel lines and clamps between the fuel manifold and the fuel injector nozzles and replace as necessary any fuel injector fuel line and clamp that does not meet all conditions specified in Lycoming Engines MSB No. 342E, dated May 18, 2004.

Alternative Methods of Compliance

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

Related Information

(m) FAA Special Airworthiness Information Bulletin No. NE–07–49, dated September 20, 2007, is not mandatory, but has additional information on this subject.

(n) Contact Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; *e-mail: Norman.perenson@faa.gov;* telephone (516)

228–7337; fax (516) 794–5531, for more information about this AD.

Issued in Burlington, Massachusetts, on December 21, 2007.

Peter A. White,

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

[FR Doc. E7–25456 Filed 12–31–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Parts 4, 12, 18, 101, 103, 113, 122, 123, 141, 143, 149 and 192

[USCBP–2007–0077]

RIN 1651–AA70

Importer Security Filing and Additional Carrier Requirements

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: To help prevent terrorist weapons from being transported to the United States, vessel carriers bringing cargo to the United States are currently required to transmit certain information to Customs and Border Protection (CBP) about the cargo they are transporting prior to lading that cargo at foreign ports of entry. This document proposes to require both importers and carriers to submit additional information pertaining to cargo before the cargo is brought into the United States by vessel. CBP must receive this information by way of a CBP-approved electronic data interchange system. The information required is reasonably necessary to further improve the ability of CBP to identify high-risk shipments so as to prevent smuggling and ensure cargo safety and security. The proposed regulations are specifically intended to fulfill the requirements of section 203 of the Security and Accountability for Every (SAFE) Port Act of 2006 and section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002.

DATES: Written comments must be submitted on or before March 3, 2008.

ADDRESSES: You may submit comments, identified by *docket number*, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number

Dept: [INSERT DOCKET NUMBER].

- *Mail*: Border Security Regulations Branch, Office of Trade, U.S Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and document number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. 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.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. Submitted comments may also be inspected on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Richard Di Nucci, Office of Field Operations, (202) 344–2513.

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Abbreviations and Terms Used in This Document

AAEI—American Association of Exporters and Importers
AAPA—American Association of Port Authorities
ABI—Automated Broker Interface
ACE—Automated Commercial Environment
AMS—Automated Manifest System
ANSI—American National Standards Institute
ATDI—Advance Trade Data Initiative
ATS—Automated Targeting System
CBP—Customs and Border Protection
COAC—Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions
CFR—Code of Federal Regulations
CSI—Container Security Initiative
CSM—Container status message
C–TPAT—Customs-Trade Partnership Against Terrorism
DDP—Delivered duty paid
DDU—Delivered duty unpaid
DHS—U.S. Department of Homeland Security
EIN—Employer identification number
FAQ—Frequently asked questions

FROB—Foreign cargo remaining on board
FTZ—Foreign trade zone
HTSUS—Harmonized Tariff Schedule of the United States
ICPA—International Compliance Professionals Association
IE—Immediate exportation
IIT—Instruments of international traffic
IMO—International Maritime Organization
IRS—Internal Revenue Service
ITDS—International Trade Data System
JIG—Joint Industry Group
MID—Manufacturer identification
MTSA—Maritime Transportation Security Act of 2002
NAM—National Association of Manufacturers
NCBFAA—National Customs Brokers and Forwarders Association of America
NVOCC—Non-vessel operating common carrier
OMB—Office of Management and Budget
Pub. L.—Public Law
RFA—Regulatory Flexibility Act of 1980
RILA—Retail Industry Leaders Association
SAFE Port Act—Security and Accountability for Every Port Act of 2006
SBREFA—Small Business Regulatory Enforcement Fairness Act of 1996
SSN—Social security number
T&E—Transportation and exportation
TSN—Trade Support Network
UMRA—Unfunded Mandates Reform Act of 1995
UN EDIFACT—United Nations rules for Electronic Data Interchange For Administration, Commerce and Transport
U.S.C.—United States Code
WCO—World Customs Organization
WSC—World Shipping Council

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the notice of proposed rulemaking. The Department of Homeland Security (DHS) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposal. Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the proposal, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Background

A. Current Requirements and CBP Authority for Issuance of Proposed Rule

1. 24 Hour Rule

Section 1431 of title 19, United States Code (19 U.S.C. 1431) requires that every vessel bound for the United States and required to make entry under 19 U.S.C. 1434 have a manifest that meets the requirements that are prescribed by regulation. Pursuant to 19 U.S.C. 1431, Customs and Border Protection (CBP) published a final rule in the **Federal Register** (67 FR 66318) on October 31, 2002, which amended the regulations in title 19, Code of Federal Regulations (CFR), to require, among other things, the advance and accurate presentation of certain manifest information 24 hours prior to lading of containerized and non-exempt break bulk cargo at a foreign port and to encourage the presentation of this information electronically, commonly known as the 24 Hour Rule. The advance information required pursuant to the October 31, 2002, final rule is required in order to enable CBP to evaluate the potential risk of smuggling weapons of mass destruction through the use of oceangoing cargo containers before goods are loaded on vessels destined to the United States. This advance information ensures compliance with U.S. law and enables CBP to facilitate the prompt release of legitimate cargo following its arrival in the United States. The information assists CBP in increasing the security of the global trading system and, thereby, reducing potential threats to the United States and world economy.

2. Trade Act Regulations

Pursuant to section 343(a) of the Trade Act of 2002 (19 U.S.C. 2071 note), as amended by section 108 of the Maritime Transportation Security Act of 2002 (Pub. L. 107–295, 116 Stat. 2064), CBP published a final rule in the **Federal Register** (68 FR 68140) on December 5, 2003, which, among other things, amended the 24 Hour Rule regulations to require the transmission of this information by way of the CBP Vessel Automated Manifest System (AMS). *See* 19 CFR 4.7 and 4.7a. The advance electronic transmission of cargo information required was determined to be reasonably necessary for CBP to identify high-risk shipments to prevent smuggling and ensure cargo safety and security.

3. SAFE Port Act

On October 13, 2006, the President signed into law the Security and Accountability for Every Port Act of 2006 (Pub. L. 109–347, 120 Stat 1884) (SAFE Port Act). Pursuant to Section 203 of the SAFE Port Act (6 U.S.C. 943), the Secretary of Homeland Security, acting through the Commissioner of CBP must promulgate regulations to require the electronic transmission of additional data elements for improved high-risk targeting, including appropriate security elements of entry data for cargo destined to the United States by vessel prior to loading of such cargo on vessels at foreign seaports. This NPRM proposes to require the electronic transmission of additional data for improved high-risk targeting.[1] Some of these data elements would be required from carriers and others would be required from ''importers,'' as that term is defined for purposes of these regulations.

Prior to enactment of the SAFE Port Act, CBP had already undertaken an internal review of its targeting and inspection processes. Consequently, CBP had implemented a comprehensive strategy designed to enhance national security while protecting the economic vitality of the United States. The Container Security Initiative (CSI), the 24 Hour Rule, and the Customs-Trade Partnership Against Terrorism (C–TPAT) are cornerstone approaches implemented to further this goal. Additionally, CBP has developed cargo risk assessment capabilities in its Automated Targeting System (ATS) to screen all maritime containers before they are loaded aboard vessels in foreign ports. Each of these initiatives is dependent upon data supplied by trade entities, including carriers, non-vessel operating common carriers (NVOCCs), brokers, importers or their agents.

The information that CBP currently analyzes to generate its risk assessment prior to vessel loading contains the same data elements that were originally established by the 24 Hour Rule. For the most part, this is the ocean carrier's or NVOCC's cargo declaration. While this was a sound initial approach to take after the tragic events of September 11th, internal and external government reviews have concluded that more complete advance shipment data would produce even more effective and more vigorous cargo risk assessments.

In late 2004, the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC) forwarded to the Department of Homeland Security and CBP one of its subcommittees' recommendations, which provided that: ''For ATS to provide enhanced security screening, the system should acquire additional shipment data to be used in the pre-vessel loading security screening

[1] Information on cargo feeds into CBP's Automated Targeting System (ATS) and is run against the system's protocols to evaluate all cargo shipments headed to the United States. ATS uses algorithms and anomaly analysis to identify high-risk targets. The system screens 100 percent of all cargo shipments. Using risk management principles and strategic intelligence, analysts use the system to identify shipments that pose a potential terrorist threat. One hundred percent of all high-risk shipments are inspected on arrival at ports of entry in the United States or in Container Security Initiative affiliated ports overseas.

process.'' COAC recommended that CBP undertake a thorough review of the data element recommendations with the Trade Support Network (TSN) to determine what data elements the government required to improve the agency's risk assessment and targeting capabilities.

Accordingly, CBP undertook further internal review and analysis of its targeting and inspection processes and worked with the TSN on this issue. Based upon its analysis, as well as the requirements under the SAFE Port Act, CBP is proposing to require the electronic transmission of additional data for improved high-risk targeting.

B. Statutory Factors Governing Development of Regulations

Pursuant to section 203(d) of the SAFE Port Act, DHS is required to adhere to the parameters applicable to the development of regulations under section 343(a) of the Trade Act of 2002, including provisions relating to consultation, technology, analysis, use of information, confidentiality, and timing requirements.

Under section 343(a) of the Trade Act of 2002, as amended, the requirement to provide information to CBP is generally to be imposed upon the party likely to have direct knowledge of the required information. However, where doing so is not practicable, CBP in the proposed regulations must take into account how the party on whom the requirement is imposed acquires the necessary information under ordinary commercial practices, and whether and how this party is able to verify the information it has acquired. Where the party is not reasonably able to verify the information, the proposed regulations must allow the party to submit the information on the basis of what it reasonably believes to be true.

Furthermore, in developing the regulations, CBP, as required, has taken into consideration the remaining parameters set forth in the statute, where applicable, including:

—The existence of competitive relationships among parties upon which the information collection requirements are imposed;

—Different commercial practices and operational characteristics, and the technological capacity to collect and transmit information electronically;

—The need for interim requirements to reflect the technology that is available at the time of promulgation of the regulations for purposes of the parties transmitting, and CBP receiving and analyzing, electronic information in a timely fashion;

—That the use of the additional information collected pursuant to these regulations is to be only for ensuring cargo safety and security and preventing smuggling and not for determining merchandise entry or for any other commercial enforcement purposes;

—The protection of the privacy of business proprietary and any other confidential cargo information that CBP receives under these regulations, with the exception that a limited portion of certain manifest information may be required to be made available for public disclosure pursuant to 19 U.S.C. 1431(c);

—Balancing the impact on the flow of commerce with the impact on cargo safety and security in determining the timing for transmittal of required information;

—Where practicable, avoiding requirements in the regulations that are redundant with one another or with requirements under other provisions of law; and

—The need, where appropriate, for different transition periods for different classes of affected parties to comply with the electronic filing requirements in the regulations.

Additionally, the statute requires that a broad range of parties, including importers, exporters, carriers, customs brokers, and freight forwarders, among other interested parties likely to be affected by the regulations, be consulted and their comments obtained and evaluated as a prelude to the development and promulgation of the regulations. In furtherance of this requirement, CBP met with COAC and other industry groups, including the American Association of Exporters and Importers (AAEI), the American Association of Port Authorities (AAPA), the Joint Industry Group (JIG), the National Association of Manufacturers (NAM), the National Customs Brokers and Forwarders Association of America (NCBFAA), the International Compliance Professionals Association (ICPA), the Retail Industry Leaders Association (RILA), the TSN, the U.S. Chamber of Commerce, and the World Shipping Council (WSC). In meetings and during conference calls, members of the importing and exporting community made many significant observations, insights, and suggestions as to what CBP should consider and how CBP should proceed in composing the proposed regulations. CBP presented to these groups a document entitled ''CBP Proposal for Advance Trade Data Elements'' (the ''10+2 Strawman''). CBP also posted the 10+2 Strawman on the CBP Web site along with a request for comments from the public. The Strawman was known as 10+2 because ten of the elements are to come from importers, as defined in these regulations, describing the cargo, and two of the elements are to come from carriers including information regarding the containers and conveyances in which the cargo is loaded.

Numerous commenters responded to the 10+2 Strawman. At CBP's request, the COAC Advance Data Subcommittee also prepared and presented recommendations to CBP. Indeed, input and recommendations from those members of the trade who participated in the meetings discussed above, the various workgroups of the COAC subcommittee, as well as the views expressed in the many e-mail submissions on this matter, were considered in the development of these proposed regulations.

In this document, CBP responds to comments that were received in response to the 10+2 Strawman and the recommendation of the COAC Advance Data Subcommittee. General comments and responses are presented in Section III of this document. Comments relating to specific aspects of the proposal are presented in the section of this document that discusses CBP's proposal relating to that particular aspect.

C. Carrier and Importer Requirements Presented Separately

Under the proposed regulations, carriers would be generally required to submit a vessel stow plan and container status messages regarding certain events relating to containers loaded on vessels destined to the United States (the ''2'' of ''10+2''). Importers, as defined in these regulations, would be required to submit an Importer Security Filing containing certain data elements (the ''10'' of ''10+2''). For purposes of the proposed regulations, importer means the party causing goods to arrive within the limits of a port in the United States. For foreign cargo remaining on board (FROB), the importer is construed as the carrier. For immediate exportation (IE) and transportation and exportation (T&E) in-bond shipments, and goods to be delivered to a foreign trade zone (FTZ), the importer is construed as the party filing the IE, T&E, or FTZ documentation with CBP. Because the proposed requirements for carriers and importers are different in scope and timing, they are presented separately below.

III. Proposed Carrier Requirements Relating to Vessel Cargo Destined to the United States

A. Overview; Vessel Stow Plan

Pursuant to the authority granted in section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002 (MTSA), CBP is proposing to require carriers to submit a vessel stow plan for vessels destined to the United States. The vessel stow plan is used to transmit information about the physical location of cargo loaded aboard a vessel, which enhances the security of the maritime environment. Under the proposed regulations, CBP must receive the stow plan for vessels transporting containers and/or break bulk cargo no later than 48 hours after departure from the last foreign port. For voyages less than 48 hours in duration, CBP must receive the stow plan prior to the vessel's arrival at the first port in the United States. Bulk carriers would be exempt from this requirement for vessels exclusively carrying bulk cargo. The vessel stow plan must be submitted via the CBP-approved electronic data interchange system. The current approved electronic data interchange system for the vessel stow plan is vessel AMS. If CBP approves of different or additional electronic data interchange systems, CBP will publish a notice in the **Federal Register**.

Under the proposed regulations, the vessel stow plan must include standard information relating to the vessel and each container and unit of break bulk cargo laden on the vessel. The vessel stow plan must include the following standard information: With regard to the vessel,

(1) Vessel name (including international maritime organization (IMO) number);

(2) Vessel operator; and

(3) Voyage number.

With regard to each container or unit of break bulk cargo,

(1) Container operator, if containerized;

(2) Equipment number, if containerized;

(3) Equipment size and type, if containerized;

(4) Stow position;

(5) Hazmat-UN code;

(6) Port of lading; and

(7) Port of discharge.

B. Overview; Container Status Messages

Pursuant to section 343(a) of the Trade Act of 2002, CBP is proposing to require carriers to submit container status messages (CSMs) daily for certain events relating to all containers laden with cargo destined to arrive within the limits of a port in the United States by vessel. Container status messages serve to facilitate the intermodal handling of containers by streamlining the information exchange between trading partners involved in administration, commerce, and transport of containerized shipments.

Container status messages will provide CBP with additional transparency into the custodial environment through which inter-modal containers are handled and transported before arrival in the United States. This enhanced view (in corroboration with other advance data messages) into the international supply chain will contribute to the security of the United States and in the international supply chain through which containers and import cargos reach ports in the United States.

The messages are used to report terminal container movements (*e.g.*, loading and discharging the vessel) and to report the change in status of containers (*e.g.*, empty or full). There are two basic standards governing the formation of CSMs. These are the American National Standards Institute (ANSI) X.12 standard and the United Nations rules for Electronic Data Interchange For Administration, Commerce and Transport (UN EDIFACT) standard. Under the proposed regulations, CSMs created under either standard will be acceptable.

Under the proposed regulations, carriers must submit a CSM when any of the required events occurs if the carrier creates or collects a CSM in its equipment tracking system reporting that event. The proposed regulations would not require a carrier create or collect any CSM data other than that which the carrier already creates or collects on its own and maintains in its electronic equipment tracking system. CSMs must be submitted no later than 24 hours after the message is entered into the carrier's equipment tracking system.

The events for which CSMs would be required are:

(1) When the booking relating to a container which is destined to arrive within the limits of a port in the United States by vessel is confirmed;

(2) When a container which is destined to arrive within the limits of a port in the United States by vessel undergoes a terminal gate inspection;

(3) When a container, which is destined to arrive within the limits of a port in the United States by vessel, arrives or departs a facility (These events take place when a container enters or exits a port, container yard, or other facility. Generally, these CSMs are referred to as ''gate-in'' and ''gate-out'' messages.);

(4) When a container, which is destined to arrive within the limits of a port in the United States by vessel, is loaded on or unloaded from a conveyance (This includes vessel, feeder vessel, barge, rail and truck movements. Generally, these CSMs are referred to as ''loaded on'' and ''unloaded from'' messages);

(5) When a vessel transporting a container, which is destined to arrive within the limits of a port in the United States by vessel, departs from or arrives at a port (These events are commonly referred to as ''vessel departure'' and ''vessel arrival'' notices);

(6) When a container which is destined to arrive within the limits of a port in the United States by vessel undergoes an intra-terminal movement;

(7) When a container which is destined to arrive within the limits of a port in the United States by vessel is ordered stuffed or stripped;

(8) When a container which is destined to arrive within the limits of a port in the United States by vessel is confirmed stuffed or stripped; and

(9) When a container which is destined to arrive within the limits of a port in the United States by vessel is shopped for heavy repair.

CBP is aware that it may be cost beneficial for some carriers to transmit all CSMs, rather than filter out CSMs relating to containers destined to the United States or relating only to the required events. Accordingly, CBP is proposing to allow carriers to transmit their ''global'' CSM messages, including CSMs relating to containers that do not contain cargo destined for importation into the United States and CSMs relating to events other than the required events. By transmitting CSMs in addition to those required by the proposed regulations, a carrier authorizes CBP to access and use that data.

For each CSM submitted, the following information must be included:

(1) Event code being reported, as defined in the ANSI X.12 or UN EDIFACT standards;

(2) Container number;

(3) Date and time of the event being reported;

(4) Status of the container (empty or full);

(5) Location where the event took place; and

(6) Vessel identification associated with the message.

Carriers would be exempt from the CSM requirement for bulk and break

bulk cargo. Under the proposed regulations, CSMs must be submitted via the CBP-approved electronic data interchange system. The current approved electronic data interchange system for CSMs is vessel AMS. CBP is continuing to consider additional electronic interchange systems. If CBP approves of a different or additional electronic data interchange system, CBP will publish notice in the **Federal Register**.

IV. Proposed Importer Requirements for Vessel Cargo Destined to the United States

A. Overview; Required Elements

Pursuant to the authority of section 343(a) of the Trade Act of 2002 and section 203 of the SAFE Port Act, in order to enhance the security of the maritime environment, CBP is proposing to require importers, as defined in these regulations, or their agents, to transmit an Importer Security Filing to CBP, for cargo other than foreign cargo remaining on board (FROB), no later than 24 hours before cargo is laden aboard a vessel destined to the United States. Because FROB is frequently laden based on a last-minute decision by the carrier, the Importer Security Filing for FROB would not be required 24 hours prior to lading. Rather, the Importer Security Filing for FROB would be required any time prior to lading.[2]

Under the proposed regulations, 10 elements are required for shipments consisting of goods intended to be entered into the United States and goods intended to be delivered to a foreign trade zone (FTZ). For goods to be delivered to an FTZ, the importer is construed as the party filing the FTZ documentation with CBP. These 10 elements must be transmitted by the importer, as defined in these regulations, or its agent. Five elements are required for shipments consisting entirely of FROB and shipments consisting entirely of goods intended to be ''transported'' as immediate exportation (IE) or transportation and exportation (T&E) in-bond shipments.

For FROB, the importer is construed as the international carrier of the vessel arriving in the United States. For IE and T&E in-bond shipments, the importer is construed as the party filing the IE or T&E documentation with CBP.

[2] CBP is not proposing to amend the timing requirements in 19 CFR part 4 requiring submission of advance manifest information 24 hours prior to lading.

1. Shipments Other Than FROB, IE Shipments, and T&E Shipments

Under the proposed regulations, for the Importer Security Filing for shipments other than those consisting entirely of FROB and goods intended to be ''transported'' in-bond as an IE or T&E, 10 elements must be provided, unless specifically exempted. The manufacturer (or supplier) name and address, country of origin, and commodity HTSUS number must be linked to one another at the line item level.

The ten required elements are:

(1) *Manufacturer (or supplier) name and address.* Name and address of the entity that last manufactures, assembles, produces, or grows the commodity or name and address of the supplier of the finished goods in the country from which the goods are leaving. In the alternative, the name and address of the manufacturer (or supplier) that is currently required by the import laws, rules and regulations of the United States (*i.e.*, entry procedures) may be provided (this is the information that is used to create the existing manufacturer identification (MID) number for entry purposes).

(2) *Seller name and address.* Name and address of the last known entity *by whom* the goods are sold or agreed to be sold. If the goods are to be imported otherwise than in pursuance of a purchase, the name and address of the owner of the goods must be provided.[3]

(3) *Buyer name and address.* Name and address of the last known entity *to whom* the goods are sold or agreed to be sold. If the goods are to be imported otherwise than in pursuance of a purchase, the name and address of the owner of the goods must be provided.[4]

(4) *Ship to name and address.* Name and address of the first deliver-to party scheduled to physically receive the goods after the goods have been released from customs custody.

(5) *Container stuffing location.* Name and address(es) of the physical location(s) where the goods were stuffed into the container. For break bulk shipments, the name and address(es) of the physical location(s) where the goods were made ''ship ready'' must be provided.

(6) *Consolidator (stuffer) name and address.* Name and address of the party who stuffed the container or arranged for the stuffing of the container. For break bulk shipments, the name and address of the party who made the goods ''ship ready'' or the party who arranged for the goods to be made ''ship ready'' must be provided.

(7) *Importer of record number / FTZ applicant identification number.* Internal Revenue Service (IRS) number, Employer Identification Number (EIN), Social Security Number (SSN), or CBP assigned number of the entity liable for payment of all duties and responsible for meeting all statutory and regulatory requirements incurred as a result of importation. For goods intended to be delivered to an FTZ, the IRS number, EIN, SSN, or CBP assigned number of the party filing the FTZ documentation with CBP must be provided. The importer of record number for Importer Security Filing purposes is the same as ''importer number'' on CBP Form 3461.

(8) *Consignee number(s).* Internal Revenue Service (IRS) number, Employer Identification Number (EIN), Social Security Number (SSN), or CBP assigned number of the individual(s) or firm(s) in the United States on whose account the merchandise is shipped. This element is the same as the ''consignee number'' on CBP Form 3461.

(9) *Country of origin.* Country of manufacture, production, or growth of the article, based upon the import laws, rules and regulations of the United States. This element is the same as the ''country of origin'' on CBP Form 3461.

(10) *Commodity HTSUS number.* Duty/statistical reporting number under which the article is classified in the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS number is required to be provided to the 6 digit level. The HTSUS number may be provided up to the 10 digit level. This element is the same as the ''H.S. number'' on CBP Form 3461 and can only be used for entry purposes, if it is provided at the 10 digit level or greater.

[3] The party required for this element is consistent with the information required on the invoice of imported merchandise. *See* 19 CFR 141.86(a)(2).

[4] The party required for this element is consistent with the information required on the invoice of imported merchandise. *See* 19 CFR 141.86(a)(2).

2. FROB, IE Shipments, and T&E Shipments

Under the proposed regulations, for the Importer Security Filing for shipments consisting entirely of FROB and shipments consisting entirely of goods intended to be ''transported'' in-bond as an IE or T&E, five elements must be provided in order to enhance the security of the maritime environment.

The five required elements are:

(1) *Booking party name and address.* Name and address of the party who is paying for the transportation of the goods.

(2) *Foreign port of unlading.* Port code for the foreign port of unlading at the intended final destination.

(3) *Place of delivery.* City code for the place of delivery.

(4) *Ship to name and address.* Name and address of the first deliver-to party scheduled to physically receive the goods after the goods have been released from customs custody.

(5) *Commodity HTSUS number.* Duty/statistical reporting number under which the article is classified in the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS number must be provided to the 6 digit level. The HTSUS number is required to be provided up to the 10 digit level.

B. Public Comments; Required Elements

Comment

The Importer Security Filing should be based on the best information available at the time of filing. CBP, in consultation with the trade, should develop a process to amend a filing prior to arrival. An entry (CBP Form 3461, 7501 or 214) filed prior to arrival should be accepted as the amendment, except to change the name and address of the consolidator and/or place of container stuffing. CBP should issue frequently asked questions (FAQs) clarifying when an amendment is required or recommended.

CBP Response

Pursuant to existing 19 CFR 4.7(b)(3)(iii) and proposed 19 CFR 149.2(c), CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired Importer Security Filing information and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what the party reasonably believes to be true.

Under the proposed regulations the party who filed the Importer Security Filing is required to update the Importer Security Filing if, after the filing and before the goods enter the limits of a port in the United States, there are changes to the information filed.

Permission to divert T&E and IE shipments would be required. Such permission would only be granted upon receipt by CBP of a complete Importer Security Filing.

Finally, in order to maintain the integrity of the differences between the Importer Security Filing and commercial documents and to facilitate compliance with the Trade Act requirement not to use security information for trade compliance purposes, CBP will not accept CBP Forms 3461, 7501, or 214 in lieu of an amendment to an Importer Security Filing.

Comment

CBP needs to provide instruction to the trade as to how to handle those situations where despite due diligence, all of the necessary data elements are simply not available 24 hours prior to loading. For example, importers may not know the container stuffing location, consolidator name and address, country of origin, and 6 digit HTSUS number 24 hours prior to lading.

CBP Response

CBP understands that, in some cases, business practices may have to be altered to obtain the required information in a timely fashion. CBP, however, will provide guidance in the form of FAQs, postings on the CBP website, and other outreach to the trade.

If an importer, as defined in these regulations, does not know an element that is required pursuant to the proposed regulations, the importer must take steps necessary to obtain the information. For example, the 6 digit HTSUS number is sometimes provided by members of the trade community on T&E and IE in-bond movements. Under the proposed rulemaking, CBP would allow importers to submit the HTSUS number at the 6 digit level. CBP recognizes that, for most importers, this information is known well before the placement of the order for their goods because of the need to determine duty cost and admissibility status prior to finalizing the purchase contract or shipment contract.

Comment

Tier 3 C-TPAT members should be exempt from the Importer Security Filing requirement or, in the alternative, should be required to submit fewer than all of the required Importer Security Filing elements. Tier 3 C-TPAT supply chains have already been vetted by CBP. Why does CBP intend to repeat its risk assessment on each individual shipment?

CBP Response

CBP will use the Importer Security Filing to assess the risk of individual shipments. For purposes of this rulemaking, all cargo arriving to the United States by vessel, regardless of the parties involved, would be subject to the Importer Security Filing requirements. CBP is not proposing to allow exemption from, or alteration of, the requirement that C-TPAT partners submit Importer Security Filing information in advance of arrival. CBP believes that compliance with these regulations complements supply chain security and efficiency procedures being implemented by C-TPAT partners. Furthermore, it is emphasized that C-TPAT membership will continue to be viewed in a positive light for targeting purposes. It is more likely that shipments made by C-TPAT members will be readily and expeditiously cleared, and not be delayed for greater CBP scrutiny. Other related perquisites of C-TPAT partnership may include essential security benefits for suppliers, employees, and customers, such as a reduction in the number and extent of border inspections and eligibility for account-based processes.

Comment

The Importer Security Filing should be done by a single party; however that party should be permitted to rely on information from more than one source for the purpose of preparing the filing. CBP and the trade should remain open to proposals for any viable means by which a single Importer Security Filing could be done by more than one party.

CBP Response

Under the proposed regulations, the importer, as defined in these regulations, is ultimately responsible for the timely, accurate, and complete submission of the Importer Security Filing. CBP is proposing to require that one party aggregate and submit all required elements. In response to requests from the trade, CBP is proposing to allow importers to designate an agent to submit the filing on behalf of the importer. While CBP understands that some business practices may need to be altered to obtain the required information at an earlier point, CBP does not anticipate that these changes will be unduly burdensome.

Comment

CBP's current layered targeting approach, along with the additional Importer Security Filing data elements, such as container stuffing and consolidator data, provide CBP with the needed information with which to determine the last country of manufacture, production, assembly or shipping. Therefore, the current regulatory definition of country of origin as articulated by existing CBP regulations and free trade agreements should remain an option for satisfying the Importer Security Filing definition of country of origin.

CBP Response

CBP agrees. Under the proposed regulations, the country of origin is required to be provided for all goods that have been listed at least at the 6 digit HTSUS level. The proposed definition for this element is consistent with the country of origin as required on CBP Form 3461.

Comment

The security filing should require an HTSUS number at only the 6 digit level; however the system used for filing should be capable of accepting up to a 10 digit HTSUS number.

CBP Response

CBP agrees. Under the proposed regulations, the importer, as defined in these regulations, is required to provide the HTSUS number 24 hours prior to lading at the HTSUS number at the 6 digit level. However, importers may submit the HTSUS number up to the 10 digit level (they must use the 10 digit level if they plan to use the Importer Security Filing as part of an entry filing).

Comment

There should be no mandatory linking of the HTSUS number to the country of origin and manufacturer (or supplier) name and address data elements. If this linking is proposed by CBP in its NPRM, the agency must first ensure this specific topic is addressed in a separate cost/benefit analysis, with the participation of the trade, and the results separately reported, because the linking would potentially impose a significant cost burden on the trade both from a programming perspective and a service provider fee perspective. The data in question is also generally not provided at the line item level to foreign entities such as freight forwarders.

CBP Response

CBP disagrees. Under the proposed regulations, the manufacturer (or supplier) name and address, country of origin, and commodity HTSUS number elements must be linked to one another at the line item level. CBP has considered the economic impacts of this proposed rule in its cost, benefit, and feasibility study. A summary of this analysis is presented below, and the complete analysis can be found on the CBP website and the public docket for this rulemaking (*see www.regulations.gov*). Regarding the potential burden, the data is already provided to CBP at the line item level for entry and entry summary purposes. If an importer, as defined in these regulations, chooses to use a foreign freight forwarder as an agent for Importer Security Filing purposes, the importer will need to provide this data to that party at the line item level.

Comment

The CBP proposal and data elements must include a bill of lading number.

CBP Response

The bill of lading number is necessary to link the carrier's submissions with the Importer Security Filing submission. Under the 24 Hour Rule, the carrier is required to provide the bill of lading number 24 hours prior to lading. Therefore, the importer, as defined in these regulations, or its authorized agent would be required to submit the bill of lading number when the importer elements are submitted.

Comment

The Importer Security Filing data elements and definitions should align with those of the World Customs Organization (WCO) SAFE Framework.

CBP Response

CBP agrees. CBP is working with the WCO to develop an amendment process that will enable the WCO Framework of Standards to adapt to changes in the international security environment. In addition, CBP will seek to make data elements consistent with (or have data elements included in) the WCO Data Model. CBP is concerned with ensuring that, to the maximum extent possible, the data elements and definitions required under the proposed Importer Security Filing regulations are consistent with the data elements and their meaning as currently required of importers under the commercial entry procedures.

Comment

The Importer Security Filing data elements and definitions should align with the ISO UNTEDE 2005 7372:2005 definitions and the Automated Commercial Environment (ACE)/ International Trade Data System (ITDS) definitions.

CBP Response

CBP has considered, and will continue to consider, ISO definitions and the ITDS requirements during the development of the Security Filing initiative. As discussed in response to a comment above, CBP is preliminarily concerned with ensuring that, to the maximum extent possible, the data elements and definitions required under the proposed Importer Security Filing regulations are consistent with the data elements and their meaning as currently required of importers under the commercial entry procedures.

Comment

Where possible the name and address of the actual manufacturer should be required. Where this is not known or the shipment consists of commingled articles, filers should indicate the name and address of the supplier in their security filing.

CBP Response

CBP agrees. Based on input from the trade, CBP is proposing to require the importer, as defined in these regulations, or his authorized agent, to provide the name and address of either the manufacturer or supplier of the finished goods in the country from which the goods are leaving.

Comment

The manufacturer identification (MID) number, as defined in CBP directives, should be accepted in lieu of the manufacturer (or supplier) name and address.

CBP Response

CBP disagrees. In general, the MID does not include the complete address of the manufacturer. CBP believes that the complete manufacturer's name and address (sometimes supplier in the country from which the goods are leaving in lieu of manufacturer) is a critical piece of information to effectively target high risk cargo. CBP believes that this information is readily available to importers because this is the underlying information necessary for creating the MID which is required for filing entry. The trade already has access to software that electronically converts the manufacturer's full name and address into the MID.

Comment

CBP should more clearly define the term ''shipper'' as used in the data definitions.

CBP Response

''Shipper'' is not one of the data elements required under the proposed regulations, nor is it used in the definitions for the required elements.

C. Overview; Master Bills/House Bills

Under the proposed regulations, an Importer Security Filing is required for each shipment, at the lowest bill of lading level (i.e., at the house bill of lading level, if applicable). Generally speaking, a master bill of lading refers to the bill of lading that is generated by the incoming carrier covering a consolidated shipment. A consolidated

shipment would consist of a number of separate shipments that have been received and consolidated into one shipment by a party, such as a freight forwarder or a NVOCC for delivery as a single shipment to the incoming carrier. The consolidated shipment would be covered under the incoming carrier's master bill. However, each of the shipments thus consolidated would be covered by what is referred to as a house bill. It is information from the relevant house bill that CBP is seeking for targeting purposes.

D. Public Comments; Master Bills/House Bills

Comment

When one shipment to one importer of record includes multiple bills of lading, only one security filing should be required. The multiple bills of lading should not be required to be identified at the line item level.

CBP Response

CBP agrees. Under the proposed rule, one Importer Security Filing can satisfy multiple bills of lading. However, the manufacturer (or supplier) name and address, country of origin, and commodity HTSUS number elements must be linked to one another at the line item level.

Comment

There should be capability for the Importer Security Filing to be done at the house bill of lading level with no reference to the master bill of lading.

CBP Response

CBP disagrees with this comment. It is necessary for the filer to reference the master bill of lading number in the Importer Security Filing in order for the house bill and master bill to be linked at a later date.

Comment

In the case of transshipped goods, the system programming should allow reporting at the house bill of lading level based upon the feeder vessel at time of loading, which can then be married to the arriving/mother vessel through AMS filing by that arriving/mother vessel.

CBP Response

CBP disagrees. Under the proposed rule, CBP is requiring that the Importer Security Filing be submitted at the lowest bill level, down to the house bill, and is requiring that the bill be the one under which the cargo is brought to the United States.

Comment

CBP should establish account profiles for importers of repetitive shipments. These accounts could be based on the ACE account example or the BRASS (line release) example at the U.S.-Canada and U.S.-Mexico borders. A repetitive low-security risk importer would then give its account information, together with anything unique/different about the specific shipment, in lieu of the full security filing.

CBP Response

CBP disagrees. CBP will use the Importer Security Filing to assess the risk of individual shipments. For purposes of this rulemaking, each and every shipment arriving to the United States by vessel would be subject to the Importer Security Filing requirements. As CBP continues to develop ACE, the agency will continue to make enhanced flexibility for the trade a top priority.

E. Overview; CBP-approved Electronic Interchange System

Under the proposed regulations, importers, as defined in these regulations, or their agents, would be required to transmit the Importer Security Filing via a CBP-approved electronic data interchange system. The current approved electronic data interchange systems for the Importer Security Filing are the Automated Broker Interface (ABI) and the Vessel Automated Manifest System (AMS). If CBP approves a different or additional electronic data interchange system, CBP will publish notice in the **Federal Register**.

F. Public Comments; CBP-approved Electronic Interchange System

Comment

CBP should delay the implementation of the regulations until they can be implemented through ACE.

CBP Response

CBP disagrees. Pursuant to Section 203 of the SAFE Port Act, the Secretary of Homeland Security is required to promulgate regulations requiring additional data elements for improved high-risk targeting. After careful consideration, DHS has determined that immediate action is necessary to increase the security of containers entering the United States by vessel by improving CBP's risk assessment capabilities. CBP will take into account systems changes made by the trade to comply with this proposed rulemaking as ACE is developed.

Comment

Current access requirements to CBP systems need to be changed. CBP must eliminate the requirement that ABI filers have custom house broker licenses or be self-filers.

CBP Response

Pursuant to 19 CFR 143.1, importers, brokers, and ABI service bureaus are permitted to participate in ABI. In addition, other parties currently access ABI to transmit protests, forms relating to in-bond movements (CBP Form 7512), and applications for FTZ admission (CBP Form 214). CBP is proposing to amend 19 CFR 143.1 to clarify that importers, brokers, and, if they do not participate in ''customs business,'' ABI service bureaus are permitted to participate in ABI for entry purposes. In addition, upon approval by CBP, any party may gain access to ABI for other purposes, including transmission of protests, forms relating to in-bond movements (CBP Form 7512), and applications for FTZ admission (CBP Form 214). In addition, CBP is proposing to amend 19 CFR 143.1 to permit any Importer Security Filing filer to gain access to ABI for the purpose of transmitting the Importer Security Filing if that party obtains a bond.

Comment

Flexibility of who may send the Importer Security Filing should be enhanced by allowing other formats and interfaces in addition to ABI and AMS.

CBP Response

CBP disagrees. As stated above, filing of the data elements through ABI and AMS is not limited to licensed customs brokers or importers filing their own submissions (ABI) or bonded carriers (AMS). CBP will continue to make enhanced flexibility for the trade a top priority as ACE is developed and is continuing to look at additional electronic interchange systems for transmission of CSMs.

Comment

CBP should transmit a confirmation or acceptance message confirming that the Importer Security Filing has been successfully filed. The acceptance message is not expected to validate the data transmitted, simply to confirm that it has been received in the required format.

In addition, query functionality should be designed into the system to provide the importer of record or its authorized agent visibility as to whether an Importer Security Filing has been made for a specific shipment. At the

same time, the system should be designed so that importers have full visibility, meaning they are able to read the actual data elements as filed and also who made the filing.

CBP Response

CBP agrees in part. CBP will provide, to the filer, electronic acknowledgement that the filer's submission has been received according to ABI and AMS standards. However, ABI and AMS filers will not have the ability to query whether an Importer Security Filing is complete, the actual data elements, or the identity of the party who filed the elements. CBP believes that communication between importers, as defined in these regulations, and their designated agents will be sufficient to inform the importer regarding the completeness and contents of a filing.

G. Overview; Authorized Agents

CBP is proposing to allow an importer, as defined in these regulations, as a business decision, to designate an authorized agent to file the Importer Security Filing on the importer's behalf. Under the proposed regulations, a party can act as an authorized agent for purposes of filing the Importer Security Filing if that party obtains access to ABI or AMS and obtains a bond.

H. Public Comments; Authorized Agents

Comment

It is unfair to hold the importer liable for data filed by a foreign party, such as a foreign freight forwarder. The foreign filing party may make typographic errors for which the importer may be liable. The importer may not have any method of even checking the advance trade data that has been filed.

CBP Response

In response to requests from the trade, CBP is proposing to allow an importer, as defined in these regulations, to use an agent of the importer's choosing to submit the Importer Security Filing. CBP is not requiring the use of an agent. The importer is ultimately responsible for the timely, accurate, and complete submission of the Importer Security Filing.

Comment

Foreign freight forwarders need to be allowed to file the Importer Security Filing. The final rule needs to state that filing the Importer Security Filing does not constitute ''customs business.''

CBP Response

The Importer Security Filing would be a filing for security purposes, not for any of the purposes identified under 19 U.S.C. 1641 or 19 CFR part 111. As such, the transmission of the Importer Security Filing alone would not constitute ''customs business.'' As discussed below, if an importer chooses to have applicable elements of the Importer Security Filing used for entry purposes, the Importer Security Filing must be self-filed by the importer or filed by a licensed customs broker.

I. Public Comments; Requested Exemptions/Exclusions From Importer Security Filing Requirements

Comment

The security filing process should be created in such a way as to allow the capability to designate that the security filing for a specific type of shipment involves a transaction for which all the required information cannot be provided at time of filing. Examples include, but are not limited to: carnets, direct duty paid (DDP)/direct duty unpaid (DDU) shipments, consigned goods, returned goods, and samples.

CBP Response

CBP generally agrees. However, the examples provided by the commenter will not be automatically exempt from submitting the required importer elements. The proposed regulations require the importer, as defined in these regulations, or its authorized agent, to submit the importer elements of the Importer Security Filing. If an importer does not know an element that is required pursuant to the proposed regulations and CBP guidance, the importer must take steps necessary to obtain the information. If an importer believes that a required Importer Security Filing data element does not exist for a non-exempt transaction type, the importer should request a ruling from CBP prior to the time required for the Importer Security Filing. If the filing is for a shipment type that CBP has specifically designated exempt from an element or elements, CBP will allow the filer to designate the filing as one of several ''exemption'' types, including FROB and IE and T&E in-bond shipments. These ''exemptions'' are discussed more in-depth below. CBP will publish technical requirements regarding the input of data in ABI and AMS on the CBP Web site.

1. Bulk and Break Bulk Cargo

Comment

How should bulk and break bulk shipments be handled?

CBP Response

Under the proposed regulations, importers of bulk cargo are exempt from the proposed importer and carrier requirements for bulk goods when the goods are exempt from the requirement that the carrier file the cargo declaration 24 hours prior to loading.

For Importer Security Filing purposes, CBP is proposing to model the treatment of approved break bulk cargo as per the Trade Act regulations in 19 CFR 4.7(b)(4). CBP is proposing to require an Importer Security Filing for break bulk shipments, when the goods are exempt from the requirement that the carrier file the cargo declaration 24 hours prior to loading, 24 hours prior to arrival in the United States. For break bulk shipments, the name and address(es) of the physical location(s) where the goods were made ''ship ready'' must be provided for the container stuffing location element and the name and address of the party who arranged for the goods to be made ''ship ready'' must be provided for the consolidator (stuffer) name and address element.

2. Foreign Cargo Remaining on Board, IE and T&E In-bond Shipments, and Instruments of International Traffic

Comment

Foreign cargo remaining on board (FROB), Immediate Exportation (IE) and Transportation and Exportation (T&E) in-bond shipments, and instruments of international traffic (IIT) (e.g., containers, racks, pallets) should be exempt from the Importer Security Filing requirement in the near term. The final regulations should define additional transactions exempt from the Importer Security Filing including types of transactions identified by CBP in consultation with the trade.

CBP Response

CBP is not proposing to require an Importer Security Filing for IIT. However, CBP is proposing to require an Importer Security Filing for all other shipments arriving in the United States by vessel, including FROB and in-bond shipments, unless specifically exempted under the regulations. Under the proposed regulations, an Importer Security Filing is required for FROB, but because FROB is not destined to be received in the United States, the carrier would be required to submit the following data elements: booking party name and address, foreign port of unlading, place of delivery, ship to name and address, and commodity 6 digit HTSUS number.

Under the proposed regulations, an Importer Security Filing is required for

IE and T&E in-bond shipments. Because IE and T&E shipments are not destined to remain in the United States, CBP is proposing to require the party taking delivery in the United States to submit the following data elements: booking party name and address, foreign port of unlading, place of delivery, ship to name and address, and commodity 6 digit HTSUS number.

CBP is proposing to amend the regulations to require that, if at the time of submission of the Importer Security Filing, the goods are intended to be moved in-bond as an IE or T&E shipment, but later a decision is made to divert the goods, permission to divert the in-bond movement to a port other than the listed port of destination or export or to change the in-bond entry into a consumption entry must be obtained from the port director of the port in which the original in-bond documents were filed. Such permission would only be granted upon receipt by CBP of a complete Importer Security Filing.

J. Overview; Updating an Importer Security Filing

As discussed above, under the proposed regulations, the party who filed the Importer Security Filing is required to update the Importer Security Filing if, after the filing and before the goods arrive within the limits of a port in the United States, there are changes to the information filed or more accurate information becomes available.

K. Public Comments; Withdrawing an Importer Security Filing

Comment

CBP should establish a procedure for cancellation of an Importer Security Filing for goods not shipped, changes in itineraries, etc.

CBP Response

CBP agrees. The proposed regulations allow for the withdrawal of an Importer Security Filing when a shipment is no longer intended to arrive within the limits of a port in the United States.

L. Overview; Importer Security Filing, Entry, and Application for FTZ Admission

1. Importer Security Filing and Entry

Four of the Importer Security Filing elements are identical to elements submitted for entry (CBP Form 3461) and entry summary (CBP Form 7501) purposes. These elements are the importer of record number, consignee number, country of origin, and commodity HTSUS number when provided at the 10 digit level. In an effort to minimize the redundancy of data transmitted to CBP, after further consideration and in response to public comments, CBP is proposing to allow an importer to submit these elements once to be used for both Importer Security Filing and entry/entry summary purposes. If an importer chooses to have these elements used for entry/entry summary purposes, the Importer Security Filing and entry/entry summary must be self-filed by the importer or filed by a licensed customs broker in a single transmission to CBP. In addition, the HTSUS number must be provided at the 10 digit level. Choosing this option does not relieve the requirement to submit all remaining Importer Security Filing elements (including the manufacturer (supplier) name and address) and entry and/or entry summary elements (including the manufacturer identification (MID) number).

Under the proposed rule, an importer can choose to do the following: (1) Submit the Importer Security Filing and entry and/or entry summary data with no connection between them; or (2) Submit the entry and/or entry summary data via the same electronic transmission as the Importer Security Filing. If the importer chooses this option, the importer would only be required to submit the 4 elements listed above once to be applied to the Importer Security Filing as well as the entry and/or entry summary. CBP will publish technical information regarding the transmission of entry and Importer Security Filing data in the appropriate guidance documents and on the CBP Web site.

2. Importer Security Filing and Application for FTZ Admission

Two of the Importer Security Filing elements are identical to elements submitted for application to admit goods to an FTZ (CBP Form 214). These elements are the country of origin and commodity HTSUS number when provided at the 10 digit level. In an effort to minimize the redundancy of data transmitted to CBP, the proposed regulations allow a filer to submit the Importer Security Filing and CBP Form 214 in the same electronic transmission to CBP and to submit the country of origin and commodity HTSUS number once to be used for both Importer Security Filing and FTZ admission purposes. If the party submitting the Importer Security Filing chooses to have this element used for FTZ admission purposes, the HTSUS number must be provided at the 10 digit level.

M. Public Comments; Importer Security Filing, Entry, and Application for FTZ Admission

Comment

CBP should allow for entry to be made when the Importer Security Filing is submitted.

CBP Response

CBP agrees. Under the proposed rule, an importer would be able to submit the entry and/or entry summary data via the same electronic transmission as the Importer Security Filing. If an importer chooses to do so, the consolidated submission of both the Importer Security Filing and entry must be filed by the party entitled to make entry pursuant to 19 U.S.C. 1484 on its own behalf or a licensed customs broker.

Comment

The regulations should allow an importer to submit, in lieu of an Importer Security Filing, CBP Forms 3461, 7501, or 214. In the alternative, the regulations should allow an importer to submit, in lieu of an Importer Security Filing, CBP Forms 3461, 7501, or 214 along with the consolidator (stuffer) name and address and container stuffing location.

CBP Response

CBP appreciates the suggestions in this comment but disagrees. Importers, as defined in these regulations, or their authorized agents, are responsible for providing the complete Importer Security Filing 24 hours prior to lading. The other options suggested do not satisfy the proposed Importer Security Filing requirements. CBP Forms 3461, 7501, and 214, alone or in combination with the consolidator (stuffer) name and address and container stuffing location, do not contain the required elements. However, as discussed above, CBP is proposing to allow an importer to submit the entry and/or entry summary data via the same electronic transmission as the Importer Security Filing. In addition, CBP is proposing to allow applicants for FTZ admission to submit the country of origin and HTSUS number (when provided at the 10 digit level) once for both Importer Security Filing and FTZ admission purposes.

Comment

The advance trade data required represents a redundancy of information.

CBP Response

As discussed above, in an effort to reduce the redundancy of information presented to CBP, CBP is proposing to allow an importer to submit certain

elements once to be used for both Importer Security Filing and entry purposes and to allow applicants for FTZ admission to submit the country of origin and HTSUS number once to be used for both Importer Security Filing and FTZ admission purposes. To the extent feasible, CBP will continue to explore ways and methods to harmonize and synchronize information collection requirements.

Comment

CBP should extend the five-day minimum entry and selectivity time frame for entry release and FTZ admission purposes to after confirmed departure of the vessel from its last foreign port to the United States.

CBP Response

CBP disagrees. CBP does not propose to amend, at this time, the regulations generally governing entry release and FTZ admission of imported goods.

V. General Public Comments

A. Economic Analysis; Cost, Benefit, and Feasibility Study

Comment

Regulations compelling the advance submission of Importer Security Filing elements would impose substantial reprogramming and process redesign costs on importers. Furthermore, the compliance costs for an importer importing multiple products per container would be substantial. CBP should complete a cost/benefit and feasibility study and report, as recommended by the SAFE Port Act, before the final rule is published.

CBP Response

CBP has conducted a cost, benefit, and feasibility analysis as required under the SAFE Port Act. This analysis meets the requirements of Executive Order 12866 and Office of Management and Budget (OMB) Circular A–4 and has been reviewed by OMB. A summary of this analysis is presented below, and the complete analysis can be found on the CBP Web site and the public docket for this rulemaking (*see www.regulations.gov*). CBP is seeking comments on this analysis.

Comment

CBP has not had sufficient discussions with the trade community, particularly in view of the enormous impact that the proposal will have on the United States economy.

CBP Response

CBP disagrees. CBP has engaged and will continue to engage the trade through the rulemaking process and through consultation as required by Section 203 of the SAFE Port Act (incorporating the requirements of Section 343(a) of the Trade Act of 2002). CBP has met with groups representing the trade while developing the proposal, including: the COAC, the American Association of Exporters and Importers (AAEI), the American Association of Port Authorities (AAPA), the Joint Industry Group (JIG), the National Association of Manufacturers (NAM), the National Customs Brokers and Forwarders Association of America (NCBFAA), the International Compliance Professionals Association (ICPA), the Retail Industry Leaders Association (RILA), the TSN, the U.S. Chamber of Commerce, and the World Shipping Council (WSC). CBP also posted a ''strawman'' proposal on the CBP Web site along with a request for comments from the trade.

Comment

CBP has not provided any indication that it is in compliance with the requirements of section 343 of the Trade Act of 2002, including the requirement that the agency: ''[account] for the extent to which the technology necessary for parties to transmit, and for CBP to receive and analyze, data in a timely fashion, is available.''

CBP Response

CBP is modifying existing systems to accommodate the proposed requirements. CBP has included the impacts to the trade to modify its processes as part of the cost, benefit, and feasibility study.

B. Protection of Confidential Information Presented to CBP

Comment

CBP should keep all the security filing data confidential from disclosure. The data should be held as not eligible for disclosure under 5 U.S.C. 552 *et seq.* or any other statute or regulation. For example, many U.S. firms do not want their federal tax identification number made available to others. The importer may not want the seller to know who the ultimate ''deliver to'' party is. The importer may fear back solicitation by the seller/exporter. In addition, the seller may not want the buyer to know the name and address of the actual manufacturer.

In lieu of the importer of record and/or consignee number, the filer should be able to indicate the name and address of the importer of record and ultimate consignee. American companies remain concerned about the misuse of the importer of record number by parties to whom such information is generally not provided for business confidential and other similar reasons.

CBP Response

CBP agrees that we should keep Importer Security Filing, vessel stow plan, and container status message information confidential, except to the extent required by law. Pursuant to the authority under both section 343(a) of the Trade Act (19 U.S.C. 2071 note) and section 203(d) of the SAFE Port Act (6 U.S.C. 943(d)), CBP is proposing to amend 19 CFR 103.31a to include the Importer Security Filing elements (including the importer of record number), vessel stow plan information, and container status message information to the list of information that is per se exempt from disclosure under 19 CFR 103.12(d), unless CBP receives a specific request for such records pursuant to 19 CFR 103.5, and the owner of the information expressly agrees in writing to its release.

While the importer, as defined in these regulations, is proposed to be responsible for providing the Importer Security Filing 24 hours prior to lading, CBP is proposing to allow the importer to use a licensed customs broker, in addition to other parties, to submit the Importer Security Filing. CBP recognizes the concerns of parties in these instances about sharing their confidential business information. If an importer with confidential business interests chooses to use an agent to file, the importer may choose to execute confidentiality agreements to protect those interests. Pursuant to 19 CFR 111.24, customs brokers are required to keep information pertaining to the business of clients serviced by the broker confidential.

C. Test of Concept and Phase-in Enforcement

Comment

There should be a test of the concept and the mechanics of the advance data elements filing with a volunteer group before the concept moves to the phase-in period. The test should involve the proposed data set and should include the approved interfaces (such as ABI and AMS) for initial programming. In order for the test results to have the greatest validity, CBP should seek participation from parties in the supply chain who ship from varying parts of the world and include small, medium and large companies as well as those who ship using forwarders and those who do not. An invitation to participate in the testing should be published in the

Federal Register and on the CBP Web site.

CBP Response

As part of CBP's pre-existing Advance Trade Data Initiative (ATDI), CBP is working with a wide variety of volunteers from the world trade community to test the trade's ability to provide data, including some elements of the Importer Security Filing, to CBP. The ATDI test results will assist CBP in understanding the various formats that are being used in the international trade community to share supply chain information. Under the foregoing circumstances, we do not believe that a new or separate test is needed to evaluate the practical requirements of this rule.

Comment

Once the final regulations are effective, CBP should adopt a phase-in period, during which CBP should publish FAQs addressing issues associated with the regulations and specific guidelines on how the phase-in will work and what rules will apply. CBP should include outreach to other countries.

CBP Response

CBP agrees. Regardless of when the regulations on this subject go into effect, CBP will adopt a phase-in enforcement process similar to that which was utilized when the 24-Hour Rule and Trade Act regulations were implemented. Depending on the circumstances, CBP may take an ''informed compliance'' approach following the effective date of this rule. Through the phase-in enforcement process, CBP will work with the trade to ensure informed compliance. CBP will continue to update the trade on issues associated with the proposed regulations in the form of FAQs, postings on the CBP website, other outreach to the trade, and consultation with foreign countries.

Comment

During any test period or phase-in period, CBP should consider requiring fewer than all of the Importer Security Filing elements and carrier elements.

CBP Response

CBP disagrees. Through discussions with the trade and through the development of ATDI, CBP has found that the elements required under the proposed regulations are generally available. Moreover, CBP does not agree that a phase-in period requiring fewer than all of the required Importer Security Filing elements and carrier elements would fulfill the goal of enhancing the government's risk assessment capabilities.

D. Other General Comments

Comment

Some importers may not be aware of the Importer Security Filing requirement, especially those traveling overseas who happen to buy something to ship.

CBP Response

Under the proposed regulations, the importer, as defined in these regulations, is ultimately responsible for the timely, accurate, and complete submission of the Importer Security Filing. CBP will conduct outreach to the public and the trade, including postings to the CBP website to promote widespread knowledge of this requirement during the phase-in enforcement period following the final rule.

Comment

Shipments may be diverted to Canada or Mexico to avoid the proposed requirements.

CBP Response

CBP disagrees. This proposal is focused on ocean cargo primarily pursuant to the requirements under the SAFE Port Act. As such, this proposal is an incremental step toward meeting the goal of securing shipments to the United States. CBP does not expect shipments to be diverted to Canada or Mexico to avoid the proposed requirements. CBP will continue to evaluate the effectiveness of this rule and will consider additional steps, including expanding the advance data requirements for other transportation modes.

Comment

If containers cannot be laden aboard the vessel, based on existing service contracts, companies quite possibly will face delays while they await another vessel for the specified contract service. These types of delays would create additional security risks.

CBP Response

With regard to the concern that the proposed rule may adversely affect the efficiency of international shipping operations, CBP recognizes this legitimate concern and has taken steps to address it in the development of this rulemaking. First, it is important to note that under the proposed regulations, it is the information about the contents of a shipping container, not the container itself, that must be presented to CBP 24 hours prior to lading at a foreign seaport. Under this proposed rule, so long as the Importer Security Filing is provided to CBP 24 hours in advance of lading, the container itself may be brought to the seaport at a later time. Second, the development of this proposal has been designed to take advantage of the existing shipping cycle. In most foreign seaports, containers destined to the United States are often stored at terminals for several hours or several days before lading. This provides ample opportunity for CBP and its foreign CSI partners to identify and screen potentially high-risk containers within the normal shipping cycle and without causing any unnecessary delays. Third, by screening potentially high-risk containers at foreign seaports during the normal shipping cycle, CBP will use the additional advance information to further expedite low risk shipments. This should not only reduce delays associated with targeting and screening containers for security purposes upon arrival in the United States; it should also add greater predictability to the movement of containers through domestic seaports.

CBP recognizes that some changes to business practices may be required in order to transmit the data required under this proposed rule. For example, although much, if not all, of the data required by CBP is available prior to lading, CBP recognizes that businesses currently may not be configured to collect and transmit such information in compliance with the rule. This is one of the reasons that CBP is proposing to phase in enforcement of the rule—to strike an appropriate balance between the needs of business and the need of the government to address the immediate threat that international terrorist organizations pose to the United States and the global economy.

Comment

CBP should ensure that the information collected pursuant to the proposed regulations will be used exclusively for ensuring transportation safety and security, and not for any other commercial enforcement purposes.

CBP Response

CBP agrees. If the proposed regulations are adopted as final, pursuant to section 343(a)(3)(F) of the Trade Act of 2002, as amended by the MTSA, CBP will use the data required by this rule ''exclusively for ensuring cargo safety and security and preventing smuggling'' and will not use the data for ''determining merchandise entry or for

any other commercial enforcement purposes.''

VI. Amendments to Bond Conditions

In order to provide a clear enforcement mechanism for the proposed requirements, CBP is proposing to amend regulations covering certain bond conditions to include agreements to pay liquidated damages for violations of the new proposed regulations. CBP is also proposing to amend the bond conditions for violations of the advance cargo information requirements under the Trade Act regulations in order to make the liquidated damages amounts for those violations consistent with the liquidated damages amounts for violations of the proposed requirements. As discussed above, upon implementation of the final rule, CBP will adopt a phase-in enforcement process for the new requirements similar to that which was utilized when the 24-Hour Rule and Trade Act regulations were implemented.

A. Bond Conditions Related to the Proposed Importer Security Filing, Vessel Stow Plan, and Container Status Message Requirements

The proposed regulations would add a new condition to those provisions in 19 CFR 113.62 required to be included in a basic importation and entry bond. Specifically, CBP is proposing to amend 19 CFR 113.62 to include a condition whereby the principal agrees to comply with the proposed Importer Security Filing requirements. If the principal fails to comply with the proposed Importer Security Filing requirements, the principal and surety (jointly and severally) would pay liquidated damages equal to the value of the merchandise involved in the default.

The proposed regulations would also amend those provisions in 19 CFR 113.64 required to be included in an international carrier bond. Specifically, CBP is proposing to amend 19 CFR 113.64 to include three new conditions. First, a new condition would be added whereby the principal agrees to comply with the proposed Importer Security Filing requirements if the principal elects to provide the Importer Security Filing on behalf of an importer, as defined in these regulations. If the principal fails to comply with the proposed Importer Security Filing requirements, the principal and surety (jointly and severally) would agree to pay liquidated damages equal to the value of the merchandise involved in the default. Second, a new condition would be added whereby the principal agrees to comply with the proposed vessel stow plan requirements. If the principal fails to comply with the proposed vessel stow plan requirements, the principal and surety (jointly and severally) would agree to pay liquidated damages of $50,000 for each vessel arrival. Third, a new condition would be added whereby the principal agrees to comply with the proposed container status message requirements. If the principal fails to timely provide CSMs for all events that occur relating to a container, for which the carrier creates or collects CSMs in its equipment tracking system, the principal and surety (jointly and severally) would pay liquidated damages of $5,000 for each violation, to a maximum of $100,000 per vessel arrival.

Lastly, the proposed regulations would amend those provisions in 19 CFR 113.73 required to be included in a foreign trade zone operator bond. Specifically, CBP is proposing to amend 19 CFR 113.73 to include a condition whereby the principal agrees to comply with the Importer Security Filing requirements. If the principal fails to comply with the proposed Importer Security Filing requirements, the principal and surety (jointly and severally) would pay liquidated damages equal to the value of the merchandise involved in the default.

B. Bond Conditions Related to the Trade Act Regulations

The proposed regulations would also amend the liquidated damages amounts for violations of the advance cargo information requirements under 19 CFR 4.7 and 4.7a in order to make those amounts consistent with the liquidated damages amounts for violations of the proposed container status message requirements ($5,000 for each violation) and more in line with the liquidated damages for violations of the proposed Importer Security Filing requirements. Accordingly, CBP is proposing to amend 19 CFR 4.7, 4.7a, and 113.64 to include liquidated damages amounts of $5,000 for each violation of the advance cargo information requirements, to a maximum of $100,000 per conveyance arrival.

VIII. Regulatory Analyses

A. Executive Order 12866

This rule is considered to be an economically significant regulatory action under Executive Order 12866 because it may result in the expenditure of over $100 million in any one year. Accordingly, this proposed rule has been reviewed by the Office of Management and Budget (OMB). The following summary presents the costs and benefits of the proposed rule plus a range of alternatives considered. (The ''Regulatory Assessment'' can be found in the docket for this rulemaking: *http://www.regulations.gov;* see also *http://www.cbp.gov*).

In this analysis, we first estimate current and future baseline conditions in the absence of the proposed rule using 2005 shipping data. In this baseline analysis, we characterize and estimate the number of unique shipments, carriers, and vessel-trips potentially affected by the proposed rule. We then identify the incremental measures that importers and carriers will take to meet the requirements of the proposed rule and estimate the costs of these activities, as well as the cost to CBP of implementing the rule. Next, relying on published literature, we identify hypothetical scenarios describing representative terrorist attacks potentially prevented by this regulation and estimate the economic costs (i.e., the consequences) of these events. We compare these consequences to the costs of the proposed regulation and estimate the reduction in the probability of a successful terrorist attack resulting from the proposed regulation that would be required for the benefits of the regulation to equal the costs of the regulation. Finally, we consider the distribution of costs to sensitive subgroups such as small entities and the energy sector.

As of the projected effective date of the regulation, we estimate that approximately 11 million import shipments conveyed by 1,200 different carrier companies operating 50,000 unique voyages or vessel-trips to the United States will be subject to the proposed rule. Table 1 summarizes the results of the regulatory analysis. We consider and evaluate the following four alternatives:

Alternative 1 (the chosen alternative): Importer Security Filings and Additional Carrier Requirements are required. Bulk cargo is exempt from the Importer Security Filing requirements;

Alternative 2: Importer Security Filings and Additional Carrier Requirements are required. Bulk cargo is not exempt from the Importer Security Filing requirements;

Alternative 3: Only Importer Security Filings are required. Bulk cargo is exempt from the Importer Security Filing requirements; and,

Alternative 4: Only the Additional Carrier Requirements are required.

TABLE 1.—SUMMARY OF FINDINGS

Discount rate	Annualized costs (2008–2017, $2007)	Terrorist attack scenario	Percent reduction in baseline risk that must be achieved for benefits to equal costs	Number of these events that must be avoided for benefits to equal costs	Comment
Alternative 1 (chosen alternative): Importer Security Filings and Additional Carrier Requirements, bulk cargo exempt					
3%	$390 million to $620 million.	Actual West Coast Port Shutdown (12-days).	25.6 to 41.0	One event in 2 to 4 years	Preferred Alternative: Most favorable combination of cost and stringency.
		Hypothetical Nuclear Attack	0.1 to 0.2	One event in 700 to 1,100 years.	
		Hypothetical Biological Attack.	0.9 to 1.4	One event in 70 to 100 years.	
7%	$390 million to $630 million.	Actual West Coast Port Shutdown (12-days).	26.1 to 42.0	One event in 2 to 4 years.	
		Hypothetical Nuclear Attack	0.1 to 0.2	One event in 600 to 1,000 years.	
		Hypothetical Biological Attack.	0.9 to 1.4	One event in 70 to 100 years.	
Alternative 2: Importer Security Filings and Additional Carrier Requirements, bulk cargo not exempt					
3%	$390 million to $620 million.	Actual West Coast Port Shutdown (12-days).	25.7 to 41.3	One event in 2 to 4 years	More stringent than Alternative 1, but limited expected additional benefit for increased cost.
		Hypothetical Nuclear Attack	0.1 to 0.2	One event in 700 to 1,100 years.	
		Hypothetical Biological Attack.	0.9 to 1.4	One event in 70 to 100 years.	
7%	$400 million to $640 million.	Actual West Coast Port Shutdown (12-days).	26.3 to 42.3	One event in 2 to 4 years.	
		Hypothetical Nuclear Attack	0.1 to 0.2	One event in 600 to 1,000 years.	
		Hypothetical Biological Attack.	0.9 to 1.5	One event in 70 to 100 years.	
Alternative 3: Importer Security Filings only, bulk cargo exempt					
3%	$380 million to $610 million.	Actual West Coast Port Shutdown (12-days).	25.5 to 40.3	One event in 3 to 4 years	Similar cost to Alternative 1 with decreased effectiveness. Importer Security Filings and Additional Carrier Requirements are not working in tandem.
		Hypothetical Nuclear Attack	0.1	One event in 700 to 1,100 years.	
		Hypothetical Biological Attack.	0.9 to 1.4	One event in 70 to 100 years.	
7%	$390 million to $620 million.	Actual West Coast Port Shutdown (12-days).	26.1 to 41.2	One event in 2 to 4 years.	
		Hypothetical Nuclear Attack	0.1 to 0.2	One event in 700 to 1,000 years.	
		Hypothetical Biological Attack.	0.9 to 1.4	One event in 70 to 100 years.	
Alternative 4: Additional Carrier Requirements only					
3%	$3 million to $12 million.	Actual West Coast Port Shutdown (12-days).	0.2 to 0.8	One event in 100 to 600 years.	Least cost, but also least effective alternative. Does not meet the statutory requirements of Section 203 of the SAFE Port Act nor provide data on shipment history. Importer Security Filings and Additional Carrier Requirements are not working in tandem.
		Hypothetical Nuclear Attack	<0.1	One event in 33,000 to 160,000 years.	
		Hypothetical Biological Attack.	<0.1	One event in 4,000 to 18,000 years.	

TABLE 1.—SUMMARY OF FINDINGS—Continued

Discount rate	Annualized costs (2008–2017, $2007)	Terrorist attack scenario	Percent reduction in baseline risk that must be achieved for benefits to equal costs	Number of these events that must be avoided for benefits to equal costs	Comment
7%	$3 million to $13 million.	Actual West Coast Port Shutdown (12-days).	0.2 to 0.9	One event in 100 to 600 years.	
		Hypothetical Nuclear Attack	<0.1	One event in 31,000 to 150,000 years.	
		Hypothetical Biological Attack.	<0.1	One event in 3,000 to 16,000 years.	

The annualized cost range presented in each cell results from varying assumptions about the estimated security filing transaction costs or fees charged to the importers by the filing parties, the potential for supply chain delays, and the estimated costs to transmit Vessel Stow Plans and CSMs to CBP.

We estimate costs separately for the Importer Security Filing requirements (up to 10 importer data elements) and the additional carrier requirements (Vessel Stow Plans and CSMs). The estimated costs for the Importer Security Filing requirements are developed on a per-shipment basis and applied to the estimated number of shipments annually for a period of 10 years (2008 through 2017). The 10-year calculation likely reflects the maximum time frame that we could reasonably project trends in international shipping. In addition, we estimate costs associated with potential delays in the supply chain that may result from having to meet the proposed filing deadline of 24 hours prior to lading at the foreign port. The estimated costs for the additional carrier requirements are developed on per-carrier and per vessel-trip bases and applied to the estimated number of carriers and vessel-trips in each year of the 10-year analysis period.

To estimate the full range of the total estimated costs for complying with the proposed rule, for the four alternatives we develop a high cost scenario and a low cost scenario by assuming certain values for the key cost factors. Annualized costs for Alternatives 1 through 3 range from $380 million to $640 million, depending on the discount rate applied, the cost scenario, whether or not bulk shipments are exempt, and whether or not the Additional Carrier Requirements are required. The annualized costs for Alternative 4 are substantially lower, ranging from $3 million to $13 million. However, this alternative is the least stringent and effective option, because it only collects data on the conveyance of the shipment. Further, it does not meet the statutory requirements of Section 203 of the SAFE Port Act. Because costs are likely to exceed $100 million annually, the proposed regulation represents an economically significant regulatory action as defined by E.O. 12866.

Ideally, the quantification and monetization of the benefits of this regulation would involve estimating the current level of risk of a successful terrorist attack, absent this regulation, and the incremental reduction in risk resulting from implementation of the proposed regulation. We would then multiply the change by an estimate of the value individuals place on such a risk reduction to produce a monetary estimate of direct benefits. However, existing data limitations and a lack of complete understanding of the true risks posed by terrorists prevent us from establishing the incremental risk reduction attributable to this rule. As a result, we undertake a ''break-even'' analysis to inform decision-makers of the necessary incremental change in the probability of such an event occurring that would result in direct benefits equal to the costs of the proposed rule.

In the break-even analysis, we identify three types of terrorist attack scenarios that may be prevented by the regulation and obtain cost estimates of the consequences of these events from published literature. The analysis compares the annualized costs of the regulation to the avoided costs of each event to estimate the reduction in the probability of such events (also presented in terms of ''odds,'' e.g., a 0.25 reduction in the probability of an event occurring in a single year implies that one additional event must be avoided in a four-year period) that must be achieved for the benefits of the regulation to equal the costs. The reduction in the odds of terrorist events are rough estimates that do not take into account changes in risk through time or factors that may affect willingness to pay to avoid the consequences of these events, such as changes in income.

For each attack scenario, Table 1 indicates what would need to occur for the costs of each alternative to equal its benefits, assuming the alternative only reduces the risk of a single event of that type of attack. As summarized in Table 1, the break-even risk reductions for Alternative 4 are significantly lower than the other three alternatives, reflecting the significantly lower costs associated with requiring only the Additional Carrier Requirements. The break-even results for the remaining three alternatives are similar because the costs of these options are not very different. For the most severe attack scenario (a hypothetical nuclear attack in a major city), the proposed regulation must result in the avoidance of one such event in a time period of 600 to 1,100 years for the benefits of the regulation to equal the costs. For the least severe of the three hypothetical attack scenarios (costs of the actual 12-day West Coast port shutdown), the estimated costs of a single incident are closer in value to the annualized costs of the proposed regulation. As a result, if the rule only reduced the risk of a single attack on a port, a shutdown would need to be avoided once in a period of two to four years for the benefits of the rule to equal costs. The results expressed as percent reductions in baseline risk also show higher reductions needed if port attacks only are mitigated (about 26 to 42 percent) and lesser reductions associated with prevention of the more catastrophic events. We note that this analysis is highly sensitive to the chosen incident scenarios.

Total present value costs of the proposed regulation are presented in Table 2, based on the cost projections we estimate for the 10-year analysis period, 2008 through 2017. Applying a social discount rate of three percent, the total costs of Alternatives 1, 2, and 3 are projected to range from $3.3 billion to $5.3 billion over 10 years depending on

the cost scenario, whether or not bulk shipments are exempt, and whether or not Additional Carrier Requirements are required. If a social discount rate of seven percent is applied instead, total costs range from $2.7 billion to $4.5 billion. Under Alternative 2, which requires Importer Security Filings for both non-bulk cargo and bulk cargo, costs are not significantly higher because the number of bulk shipments is relatively small compared to the number of non-bulk shipments. Under Alternative 3, costs are not significantly lower because the estimated costs for the Additional Carrier Requirements are relatively small compared to the estimated costs for the Importer Security Filings. The estimated costs for Alternative 4 are significantly lower than the other three alternatives, ranging from $19 million to $104 million.

TABLE 2.—TOTAL PRESENT VALUE COSTS, 2008–2017

[$2007]

Discount rate	Present value costs
Alternative 1 (chosen alternative): Importer Security Filings and Additional Carrier Requirements, bulk cargo exempt	
3%	$3.3 billion to $5.3 billion
7%	$2.8 billion to $4.4 billion
Alternative 2: Importer Security Filings and Additional Carrier Requirements, bulk cargo not exempt	
3%	$3.3 billion to $5.3 billion
7%	$2.8 billion to $4.5 billion
Alternative 3: Importer Security Filings only, bulk cargo exempt	
3%	$3.3 billion to $5.2 billion
7%	$2.7 billion to $4.4 billion
Alternative 4: Additional Carrier Requirements only	
3%	$0.02 billion to $0.1 billion
7%	$0.02 billion to $0.1 billion

Again, the range presented in each cell results from varying assumptions about the estimated security filing transaction costs or fees charged to the importers by the filing parties, the potential for supply chain delays, and the estimated costs to transmit Vessel Stow Plans and CSMs to CBP.

Annual undiscounted costs of the regulation are presented in Table 3.

TABLE 3.—ANNUAL UNDISCOUNTED COSTS BY YEAR, 2008–2017

[$2007, in millions]

Year	Alternative 1 (chosen alternative): Importer security filings and additional carrier requirements, bulk cargo exempt	Alternative 2: Importer security filings and additional carrier requirements, bulk cargo not exempt	Alternative 3: Importer security filings only, bulk cargo exempt	Alternative 4: Additional carrier requirements only
2008	$300 to $520	$300 to $520	$290 to $490	$1 to $30
2009	310 to 500	310 to 500	310 to 490	1 to 7
2010	330 to 520	330 to 530	330 to 520	1 to 7
2011	340 to 550	350 to 550	340 to 540	1 to 7
2012	360 to 580	370 to 580	360 to 570	1 to 8
2013	380 to 610	390 to 610	380 to 600	1 to 8
2014	400 to 640	410 to 650	400 to 630	1 to 8
2015	420 to 680	430 to 680	420 to 670	1 to 8
2016	450 to 710	450 to 710	450 to 700	1 to 8
2017	470 to 750	470 to 750	470 to 740	1 to 8

As shown in Table 3, the annual discounted costs increase from year-to-year over the 10-year analysis period. This increase reflects our projected annual increases in the number of shipments, value of shipments, and vessel-trips into the United States potentially affected by the proposed rule.

The results indicate that Alternative 1 provides the most favorable combination of cost and stringency. While Alternative 2 might be considered more stringent because it does not exempt bulk cargo from the Importer Security Filing requirements, the impact of this is expected to be slight, because the number of bulk shipments is relatively small compared to the number of non-bulk shipments. Alternative 3 is expected to have costs similar to Alternative 1, but will be less stringent because it only requires Importer Security Filings and does not include data that verify the information on the cargo manifest and identify and track the movement, location, and status of cargo (and in particular, containerized cargo) from the time its transport is booked until its arrival in the United States. Without the Additional Carrier Requirements, CBP will not be able to assess the specific risks associated with the many individual movements and transfers involved in shipping cargo to the United States. Thus, an important element of CBP's layered, risk-based approach to cargo security would, consequently, be omitted.

Alternatives 3 and 4 are not chosen, in part, because it is CBP's judgment that neither of these options will be as effective as the selected option. Specifically, the Importer Security Filing requirements and the Additional Carrier Requirements work in tandem. The Additional Carrier Requirements focus on the conveyance of the goods and are distinct from the Importer Security Filing elements, which are focused on the merchandise and the parties involved in the acquisition process. Specifically, Vessel Stow Plans will assist CBP in validating other advanced cargo information submissions by allowing CBP to, among

other things, better detect unmanifested containers without relying on physical verification methods that are manpower intensive and costly. CSMs will provide CBP with additional transparency into the custodial environment through which inter-modal containers are handled and transported before arrival in the United States. Because CSMs are created independently of the manifest, CBP can utilize them to corroborate other advanced data elements, including Importer Security Filings and those elements related to container and conveyance origin. This corroboration with other advanced data messages, including Importer Security Filings, and an enhanced view into the international supply chain will contribute to the security of the United States and the international supply chain through which containers and imported cargo are shipped to U.S. ports.

Based on this analysis of alternatives, CBP has determined that Alternative 1 provides the most favorable balance between security outcomes and impacts to maritime transportation. As summarized in Table 4, the incremental costs of this regulation, on a per shipment basis, is a very small fraction of the value of a shipment. The relatively high cost of the rule over 10 years is driven by the large volume of shipments, not high per-transaction costs. Shipment data indicate that the median value of a shipment of goods imported into the United States is approximately $37,000. As shown in Table 4, the increase in costs of imported shipments will range from $20 to $38 per shipment, depending on the discount rate applied, the cost scenario, and whether or not bulk shipments are exempt. The added costs of this regulation are estimated to be only 0.05 percent to 0.10 percent of the median value of $37,000 per shipment. CBP welcomes comments on these conclusions and the regulatory alternatives considered.

TABLE 4.—COSTS PER SHIPMENT, MEDIAN VALUE OF SHIPMENT, VESSEL-TRIP, AND CARRIER

[$2007]

	3% discount rate	7% discount rate
Importer Security Filing Costs: Alternatives 1 and 3 (bulk cargo exempt)		
Total Present Value Cost	$3.3 billion to $5.2 billion	$2.7 billion to $4.4 billion
Number of shipments (10-year total)	137 million	137 million
Equivalent per shipment cost	$24 to $38	$20 to $32
Median value per shipment	$36,900	$36,900
Cost per median value	0.06 to 0.10 percent	0.05 to 0.09 percent
Importer Security Filing costs: Alternative 2 (bulk cargo not exempt)		
Total Present Value Cost	$3.3 billion to $5.2 billion	$2.8 billion to $4.4 billion
Number of shipments (10-year total)	138 million	138 million
Equivalent per shipment cost	$24 to $38	$20 to $32
Median value per shipment	$37,200	$37,200
Cost per median value	0.06 to 0.10 percent	0.05 to 0.09 percent
Vessel Stow Plan Costs: Alternatives 1, 2, and 4		
Total present value cost	$6 million to $35 million	$5 million to $30 million
Number of non-bulk vessel-trips, small and large carriers (10-year total).	414,000	414,000
Equivalent per vessel-trip cost	$14 to $84	$12 to $73
Container Status Message Costs: Alternatives 1, 2, and 4		
Total present value cost	$0.3 million to $54 million	$0.3 million to $49 million
Number of container carriers, large	74	74
Equivalent per carrier cost	$4,000 to $730,000	$4,000 to $660,000

The proposed regulation may increase the time shipments are in transit, particularly for shipments consolidated in containers. For such shipments, the supply chain is generally more complex and the importer has less control of the flow of goods and associated security filing information. Foreign cargo consolidators may be consolidating multiple shipments from one or more shippers in a container destined for one or more buyers or consignees. In order to ensure that the security filing data is provided by the shippers to the importers (or their designated agents) and is then transmitted to and accepted by CBP in advance of the 24-hour deadline, consolidators may advance their cut-off times for receipt of shipments and associated security filing data.

These advanced cut-off times would help prevent a consolidator or carrier from having to unpack or unload a container in the event the security filing for one of the shipments contained in the container is inadequate or not accepted by CBP. For example, consolidators may require shippers to submit, transmit, or obtain CBP approval of their security filing data before their shipments are stuffed in the container, before the container is sealed, or before the container is delivered to the port for lading. In such cases, importers would likely have to increase the times they hold their goods as inventory and thus incur additional inventory carrying costs to sufficiently meet these advanced cut-off times imposed by their foreign consolidators. The high end of the cost ranges presented in Table 4 assumes an initial supply chain delay of 1 day (24 hours) for the first year of implementation (2008) and a delay of 12 hours for years 2 through 10 (2009–2017).

B. Regulatory Flexibility Act

In response to the requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) and Executive Order

13272, entitled ''Proper Consideration of Small Entities in Agency Rulemaking,'' Federal agencies must consider the potential distributional impact of rules on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. Because the proposed rule affects all importers and carriers bringing goods to the United States, it likely affects a substantial number of small entities in each industry conducting these activities. However, due to data limitations, we cannot determine if these effects will be significant on a per-entity basis. Therefore, at this time, CBP cannot certify that the proposed rule will not have a significant impact on a substantial number of small entities. CBP seeks comments on this conclusion. (The detailed Initial Regulatory Flexibility Act analysis is contained in the ''Regulatory Assessment,'' which can be found in the docket for this rulemaking: *http://www.regulations.gov;* see also *http://www.cbp.gov*).

A description of the reasons why action by the agency is being considered: the description of the proposed action is contained above.

A succinct statement of the objectives of, and legal basis for, the proposed rule: Section 203(b) of the Security and Accountability for Every Port Act (SAFE Port Act) of 2006 states that the Secretary of Homeland Security ''shall require the electronic transmission to the Department of additional data elements for improved high-risk targeting, including appropriate elements of entry data * * * to be provided as advanced information with respect to cargo destined for importation into the United States prior to loading of such cargo on vessels at foreign ports.'' The information required is that which is reasonably necessary to enable high-risk shipments to be identified so as to prevent smuggling and ensure cargo safety and security pursuant to the laws enforced and administered by CBP. In addition, section 343(a) of the Trade Act of 2002 states that the Secretary of Homeland Security ''shall promulgate regulations providing for the transmission * * * of information pertaining to cargo destined for importation into the United States * * *.''

A description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply: The proposed rule applies to all entities importing containerized, break-bulk, or Ro-Ro shipments into the United States. Under the chosen alternative, bulk shipments are exempt from the proposed rule. The proposed regulation also applies to VOCCs transporting shipments via sea to the United States. The majority of the affected entities are likely to be small.

A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record: The requirements of the proposed rule are expected to be submitted electronically by importers or VOCCs (or an agent representing either).

An identification, to the extent practicable, of all relevant federal rules which may duplicate, overlap or conflict with the proposed rule: The data elements required to be submitted in this proposed rule are, largely, already required under existing Federal rules (*e.g.*, the 24–Hour Advance Vessel Manifest Rule, customs entry requirements). The main impact of this proposed rule, in addition to increasing the number of required data elements, is to change the timeframe prior to departure from the foreign port and prior to arrival at the U.S. port in which submittal is required.

An establishment of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities: CBP does not identify any significant alternatives to the proposed rule that specifically address small entities. Alternative 1, under which bulk cargo is exempt, is the chosen alternative.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) requires agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. The proposed regulation is exempt from these requirements under 2 U.S.C. 1503 (Exclusions) which states that UMRA ''shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress and any provision in a proposed or final Federal regulation that is necessary for the national security or the ratification or implementation of international treaty obligations.''

D. Paperwork Reduction Act

There are three proposed collections of information in this document. The proposed collections are contained in 19 CFR 4.7c, 4.7d, and 149.2. This information would be used by CBP to further improve the ability of CBP to identify high-risk shipments so as to prevent smuggling and ensure cargo safety and security. The likely respondents and/or recordkeepers are individuals and businesses.

Under § 4.7c, a vessel stow plan would be required from a carrier when that carrier causes a vessel to arrive in the United States. Vessel stow plans are used to transmit information about cargo loaded aboard a vessel.

Under § 4.7d, container status messages would be required from an incoming carrier for all containers laden with cargo destined to be transported by that carrier and to arrive within the limits of a port in the United States by vessel. Container status messages serve to facilitate the intermodal handling of containers by streamlining the information exchange between trading partners involved in administration, commerce, and transport of containerized shipments. The messages can also be used to report terminal container movements (e.g., loading and discharging the vessel) and to report the change in status of containers (e.g., empty or full). Container status messages would provide CBP with additional transparency into the custodial environment through which inter-modal containers are handled and transported before arrival and after unlading in the U.S. This enhanced view (in corroboration with other advance data messages) into the international supply chain would contribute to the security of the United States and in the international supply chain through which containers and import cargos reach ports in the United States.

Under § 149.2, an Importer Security Filing, consisting of security elements of entry data for cargo destined to the United States, would be required from the importer, as defined in these regulations. For foreign cargo remaining on board (FROB), the importer would be construed as the carrier. For immediate exportation (IE) and transportation and exportation (T&E) in-bond shipments, and goods to be delivered to a foreign trade zone (FTZ), the importer would be construed as the party filing the IE, T&E, or FTZ documentation with CBP.

The collection of information encompassed within this proposed rule has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information

displays a valid control number assigned by OMB.

Estimated Burden for Carrier Requirements Under § 4.7c

Estimated annual reporting and/or recordkeeping burden: 59,542 hours.

Estimated average annual burden per respondent/recordkeeper: 1 hour per Vessel Stow Plan per carrier.

Estimated number of respondents and/or recordkeepers: 958.

Estimated annual frequency of responses: dependent on number of vessel arrivals in the United States.

Estimated Burden for Carrier Requirements Under § 4.7d

Estimated annual reporting and/or recordkeeping burden: 6,753 hours.

Estimated average annual burden per respondent/recordkeeper: 15 minutes per day per carrier.

Estimated number of respondents and/or recordkeepers: 958.

Estimated annual frequency of responses: dependent on number of vessel arrivals in the United States.

Estimated Burden for Importer Requirements Under § 149.2

Estimated annual reporting and/or recordkeeping burden: 10,482,907 hours.

Estimated average annual burden per respondent/recordkeeper: 52.3 hours.

Estimated number of respondents and/or recordkeepers: 200,438.

Estimated annual frequency of responses: dependent on number of shipments to the United States.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Border Security Regulations Branch, Office of International Trade, U.S Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchases of services to provide information.

The list of approved information collections, contained in 19 CFR Part 178, would be revised to add an appropriate reference to sections 4.7c, 4.7d, and 149.2 upon adoption of the proposal as a final rule.

IX. Signing Authority

The signing authority for these amendments falls under 19 CFR 0.1(b). Accordingly, this document is signed by the Secretary of Homeland Security (or his delegate).

X. Proposed Regulatory Amendments

List of Subjects

19 CFR part 4

Customs duties and inspection, Freight, Maritime carriers, Reporting and recordkeeping requirements, Vessels.

19 CFR part 12

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR part 18

Common carriers, Customs duties and inspection, Freight, Penalties, Reporting and recordkeeping requirements, Surety bonds.

19 CFR part 101

Customs duties and inspection, Vessels.

19 CFR part 103

Administrative practice and procedure, Confidential business information, Courts, Freedom of information, Law enforcement, Privacy, Reporting and recordkeeping requirements.

19 CFR part 113

Common carriers, Customs duties and inspection, Freight, Reporting and recordkeeping requirements, Surety bonds.

19 CFR part 122

Administrative practice and procedure, Customs duties and inspection, Penalties, Reporting and recordkeeping requirements.

19 CFR part 123

Customs duties and inspection, Freight, Reporting and recordkeeping requirements, Vessels.

19 CFR part 141

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR part 143

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR part 149

Arrival, Declarations, Customs duties and inspection, Freight, Importers, Imports, Merchandise, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR part 192

Penalties, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

It is proposed to amend parts 4, 12, 18, 101, 103, 113, 122, 123, 141, 143, 149, and 192 of title 19, Code of Federal Regulations (19 CFR parts 4, 12, 18, 101, 103, 113, 122, 123, 141, 143, 149, and 192), as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 is revised, the relevant specific authority citations are revised, and the specific authority citation for sections 4.7c and 4.7d is added to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 60105;

* * * * *

Section 4.7 also issued under 19 U.S.C. 1581(a);

Section 4.7a also issued under 19 U.S.C. 1498, 1584;

* * * * *

Sections 4.7c and 4.7d also issued under 6 U.S.C. 943.

* * * * *

2. Amend § 4.7 by:

a. Revising paragraph (b)(2); and

b. In paragraph (e), removing the phrase ''in addition to penalties applicable under other provisions of law'' at the end of the first sentence and adding in its place the phrase ''in addition to damages under the international carrier bond of $5,000 for each violation discovered'', and removing the phrase '', in addition to any other penalties applicable under other provisions of law'' at the end of the paragraph and adding in its place ''of $5,000 for each violation discovered''.

The revised paragraph (b)(2) reads as follows:

§ 4.7 Inward foreign manifest; production on demand; contents and form; advance filing of cargo declaration.

* * * * *

(b) * * *

(2) In addition to the vessel stow plan requirements pursuant to § 4.7c of this part and the container status message requirements pursuant to § 4.7d of this part, subject to the effective date provided in paragraph (b)(5) of this section, and with the exception of any bulk or authorized break bulk cargo as prescribed in paragraph (b)(4) of this section, Customs and Border Protection (CBP) must receive from the incoming carrier, for any vessel covered under paragraph (a) of this section, the CBP-approved electronic equivalent of the vessel's Cargo Declaration (Customs Form 1302), 24 hours before the cargo is laden aboard the vessel at the foreign port (*see* § 4.30(n)(1)). The current approved system for presenting electronic cargo declaration information to CBP is the Vessel Automated Manifest System (AMS).

* * * * *

§ 4.7a [Amended]

3. Amend § 4.7a(f) by removing the phrase ''in addition to penalties applicable under other provisions of law'' at the end of the first sentence and adding in its place ''in addition to damages under the international carrier bond of $5,000 for each violation discovered'', and removing the phrase '', in addition to other penalties applicable under other provisions of law'' at the end of the paragraph and adding in its place ''of $5,000 for each violation discovered''.

4. Add a new § 4.7c, to read as follows:

§ 4.7c Vessel stow plan.

Vessel stow plan required. In addition to the advance filing requirements pursuant to §§ 4.7 and 4.7a of this part and the container status message requirements pursuant to § 4.7d of this part, for all vessels subject to § 4.7(a) of this part, except for any vessel exclusively carrying bulk cargo as prescribed in § 4.7(b)(4) of this part, the incoming carrier must submit a vessel stow plan consisting of vessel, container, and break bulk cargo information as specified in paragraphs (a)(2) and (3) of this section within the time prescribed in paragraph (a)(1) of this section via the CBP-approved electronic data interchange system.

(a) *Time of transmission.* Customs and Border Protection (CBP) must receive the stow plan no later than 48 hours after the vessel departs from the last foreign port. For voyages less than 48 hours in duration, CBP must receive the stow plan prior to arrival at the first U.S. port.

(b) *Vessel information required to be reported.* The following information must be reported for each vessel:

(1) Vessel name (including international maritime organization (IMO) number);

(2) Vessel operator; and

(3) Voyage number.

(c) *Container information required to be reported.* The following information must be reported for each container and unit of break bulk cargo carried on each vessel:

(1) Container operator, if containerized;

(2) Equipment number, if containerized;

(3) Equipment size and type, if containerized;

(4) Stow position;

(5) Hazmat-UN code;

(6) Port of lading; and

(7) Port of discharge.

5. Add a new section 4.7d, to read as follows:

§ 4.7d Container status messages.

(a) *Container status messages required.* In addition to the advance filing requirements pursuant to §§ 4.7 and 4.7a of this part and the vessel stow plan requirements pursuant to § 4.7c of this part, for all containers laden with cargo destined to arrive within the limits of a port in the United States from foreign by vessel, the incoming carrier must submit messages regarding the status of the events as specified in paragraph (b) of this section if the carrier creates or collects a container status message (CSM) in its equipment tracking system reporting that event. CSMs must be transmitted to Customs and Border Protection (CBP) within the time prescribed in paragraph (c) of this section via a CBP-approved electronic data interchange system. There is no requirement that a carrier create or collect any CSM data under this paragraph that the carrier does not otherwise create or collect on its own and maintain in its electronic equipment tracking system.

(b) *Events required to be reported.* The following events must be reported if the carrier creates or collects a container status message in its equipment tracking system reporting that event:

(1) When the booking relating to a container which is destined to arrive within the limits of a port in the United States by vessel is confirmed;

(2) When a container which is destined to arrive within the limits of a port in the United States by vessel undergoes a terminal gate inspection;

(3) When a container, which is destined to arrive within the limits of a port in the United States by vessel, arrives or departs a facility (These events take place when a container enters or exits a port, container yard, or other facility. Generally, these CSMs are referred to as ''gate-in'' and ''gate-out'' messages.);

(4) When a container, which is destined to arrive within the limits of a port in the United States by vessel, is loaded on or unloaded from a conveyance (This includes vessel, feeder vessel, barge, rail and truck movements. Generally, these CSMs are referred to as ''loaded on'' and ''unloaded from'' messages);

(5) When a vessel transporting a container, which is destined to arrive within the limits of a port in the United States by vessel, departs from or arrives at a port (These events are commonly referred to as ''vessel departure'' and ''vessel arrival'' notices);

(6) When a container which is destined to arrive within the limits of a port in the United States by vessel undergoes an intra-terminal movement;

(7) When a container which is destined to arrive within the limits of a port in the United States by vessel is ordered stuffed or stripped;

(8) When a container which is destined to arrive within the limits of a port in the United States by vessel is confirmed stuffed or stripped; and

(9) When a container which is destined to arrive within the limits of a port in the United States by vessel is shopped for heavy repair.

(c) *Time of transmission.* For each event specified in paragraph (b) of this section that has occurred, and for which the carrier creates or collects a container status message (CSM) in its equipment tracking system reporting that event, the carrier must transmit the CSM to CBP no later than 24 hours after the CSM is entered into the equipment tracking system.

(d) *Contents of report.* The report of each event must include the following:

(1) Event code being reported, as defined in the ANSI X.12 or UN EDIFACT standards;

(2) Container number;

(3) Date and time of the event being reported;

(4) Status of the container (empty or full);

(5) Location where the event took place; and

(6) Vessel identification associated with the message.

(e) *Additional container status messages.* A carrier may transmit other container status messages in addition to those required pursuant to paragraph (b)

of this section. By transmitting additional container status messages, the carrier authorizes Customs and Border Protection (CBP) to access and use that data.

PART 12—SPECIAL CLASSES OF MERCHANDISE

6. The general authority citation for part 12 and specific authority citation for § 12.3 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Section 12.3 also issued under 7 U.S.C. 135h, 21 U.S.C. 381;

* * * * *

§ 12.3 [Amended]

7. Amend § 12.3(b)(2) and (c) by removing references to ''§ 113.62(l)(1)'' and adding in their place ''§ 113.62(m)(1)''.

PART 18—VESSELS IN FOREIGN AND DOMESTIC TRADES

8. The general authority citation for part 18 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624;

* * * * *

9. Amend § 18.5 by:

a. In paragraph (a), removing the reference to ''paragraphs (c), (d), (e) and (f)'' and adding in its place ''paragraphs (c), (d), (e), (f), and (g)''; and

b. Adding a new paragraph (g).

The new paragraph (g) reads as follows:

§ 18.5 Diversion.

* * * * *

(g) For in-bond shipments which, at the time of transmission of the Importer Security Filing as required by § 149.2 of this chapter, are intended to be entered as an immediate exportation (IE) or transportation and exportation (T&E) shipment, permission to divert the in-bond movement to a port other than the listed port of destination or export or to change the in-bond entry into a consumption entry must be obtained from the port director of the port of origin. Such permission would only be granted upon receipt by Customs and Border Protection (CBP) of a complete Importer Security Filing as required by part 149 of this chapter.

PART 103—AVAILABILITY OF INFORMATION

10. The general authority citation for part 103 continues, and the specific authority citation for § 103.31a is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

Section 103.31a also issued under 19 U.S.C. 2071 note and 6 U.S.C. 943;

* * * * *

11. Revise § 103.31a to read as follows:

§ 103.31a Advance electronic information for air, truck, and rail cargo; Importer Security Filing information for vessel cargo.

The following types of advance electronic information are per se exempt from disclosure under § 103.12(d), unless CBP receives a specific request for such records pursuant to § 103.5, and the owner of the information expressly agrees in writing to its release:

(a) Advance cargo information that is electronically presented to Customs and Border Protection (CBP) for inbound or outbound air, rail, or truck cargo in accordance with § 122.48a, 123.91, 123.92, or 192.14 of this chapter;

(b) Importer Security Filing information that is electronically presented to CBP for inbound vessel cargo in accordance with § 149.2 of this chapter;

(c) Vessel stow plan information that is electronically presented to CBP for inbound vessels in accordance with § 4.7c of this chapter; and

(d) Container status message information that is electronically presented for inbound containers in accordance with § 4.7d of this chapter.

PART 113—CUSTOMS BONDS

12. The general authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

13. Amend § 113.62 by:

a. Redesignating paragraphs (j) through (l) as paragraphs (k) through (m);

b. Adding new paragraph (j);

c. In redesignated paragraph (k)(2), removing the phrase ''$5,000 for each regulation violated'' and adding in its place ''$5,000 for each violation''.

d. In newly designated paragraph (m)(1), removing the reference to ''paragraphs (a), (g), (i), (j)(2), or (k)'' and adding in its place ''paragraphs (a), (g), (i), (j), (k)(2), or (l)'';

e. In newly designated paragraph (m)(4), removing the reference to ''paragraph (l)(1)'' and adding in its place ''paragraph (m)(1)''; and

f. In newly designated paragraph (m)(5), removing the reference to ''paragraph (k)'' and adding in its place ''paragraph (l)''.

The new paragraph (j) reads as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(j) The principal agrees to comply with all Importer Security Filing requirements set forth in part 149 of this chapter including but not limited to providing security filing information to Customs and Border Protection in the manner and in the time period prescribed by regulation. If the principal defaults with regard to any obligation, the principal and surety (jointly and severally) agree to pay liquidated damages equal to the value of the merchandise involved in the default.

* * * * *

14. Amend § 113.64 by:

a. Redesignating paragraphs (d) through (g) as paragraphs (h) through (k);

b. Redesignating paragraph (c) as paragraph (d);

c. Adding new paragraphs (c), (e), (f), and (g); and

d. In redesignated paragraph (d), removing the phrase ''$5,000 for each regulation violated'' and adding in its place ''$5,000 for each violation''.

New paragraphs (c), (e), (f), and (g) read as follows:

§ 113.64 International carrier bond conditions.

* * * * *

(c) *Agreement to provide advance cargo information.* The incoming carrier agrees to provide advance cargo information to CBP in the manner and in the time period required under §§ 4.7 and 4.7a of this chapter. If the incoming carrier, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation, to a maximum of $100,000 per conveyance arrival.

* * * * *

(e) *Agreement to comply with Importer Security Filing requirements.* If the principal elects to provide the Importer Security Filing information to Customs and Border Protection (CBP), the principal agrees to comply with all Importer Security Filing requirements set forth in part 149 of this chapter including but not limited to providing security filing information to CBP in the manner and in the time period prescribed by regulation. If the principal defaults with regard to any obligation, the principal and surety (jointly and severally) agree to pay liquidated damages equal to the value of the merchandise involved in the default.

(f) *Agreement to comply with vessel stow plan requirements.* If the principal causes a vessel to arrive within the limits of a port in the United States, the principal agrees to submit a stow plan in the manner and in the time period required pursuant to part 4.7c of this chapter. If the principal defaults with regard to this obligation, the principal and surety (jointly and severally) agree to pay liquidated damages of $50,000 for each vessel arrival.

(g) *Agreement to comply with container status message requirements.* If the principal causes a vessel to arrive within the limits of a port in the United States, the principal agrees to submit container status messages in the manner and in the time period required pursuant to part 4.7d of this chapter. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation, to a maximum of $100,000 per vessel arrival.

* * * * *

15. Amend § 113.73 by:

a. Redesignating existing paragraphs (c) and (d) as paragraphs (d) and (e); and

b. Adding a new paragraph (c).

The new paragraph (c) reads as follows:

§ 113.73 Foreign trade zone operator bond conditions.

* * * * *

(c) *Agreement to comply with Importer Security Filing requirements.* The principal agrees to comply with all Importer Security Filing requirements set forth in part 149 of this chapter including but not limited to providing security filing information to Customs and Border Protection (CBP) in the manner and in the time period prescribed by regulation. If the principal defaults with regard to any obligation, the principal and surety (jointly and severally) agree to pay liquidated damages equal to the value of the merchandise involved in the default.

* * * * *

PART 122—AIR COMMERCE REGULATIONS

16. The general authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

* * * * *

§ 122.48a [Amended]

17. Amend § 122.48a(c)(2) by removing the reference to ''§ 113.62(j)(2)'' and adding in its place ''§ 113.62(k)(2)''.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

18. The general authority citation for part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624, 2071 note.

* * * * *

§ 123.92 [Amended]

19. Amend § 123.92(c)(2) by removing the reference to ''§ 113.62(j)(2)'' and adding in its place ''§ 113.62(k)(2)''.

PART 141—ENTRY OF MERCHANDISE

20. The general authority citation for part 141 and specific authority citation for § 141.113 continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Section 141.113 also issued under 19 U.S.C. 1499, 1623.

§ 141.113 [Amended]

21. Amend § 141.113(b) by removing the reference to ''§ 113.62(l)(1)'' and adding in its place ''§ 113.62(m)(1)''.

PART 143—SPECIAL ENTRY PROCEDURES

24. The general authority citation for part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

25. Revise § 143.1 to read as follows:

§ 143.1 Eligibility.

The Automated Broker Interface (ABI) is a module of the Customs Automated Commercial System (ACS) which allows participants to transmit data electronically to CBP through ABI and to receive transmissions through ACS. Its purposes are to improve administrative efficiency, enhance enforcement of customs and related laws, lower costs and expedite the release of cargo.

(a) *Participants for entry and entry summary purposes.* Participants in ABI for the purposes of transmitting data relating to entry and entry summary may be:

(1) Customs brokers as defined in § 111.1 of this chapter;

(2) Importers as defined in § 101.1 of this chapter; and

(3) ABI service bureaus, that is, an individual, partnership, association or corporation which provides communications facilities and data processing services for brokers and importers, but which does not engage in the conduct of customs business as defined in § 111.1 of this chapter.

(b) *Participants for Importer Security Filing purposes.* Any party may participate in ABI solely for the purposes of filing the Importer Security Filing pursuant to § 149.2 of this chapter if that party fulfills the eligibility requirements contained in § 149.5 of this chapter. If a party other than a customs broker as defined in § 111.1 of this chapter or an importer as defined 19 U.S.C. 1484 submits the Importer Security Filing, no portion of the Importer Security Filing can be used for entry or entry summary purposes pursuant to § 149.5 of this chapter.

(c) *Participants for other purposes.* Upon approval by CBP, any party may participate in ABI for other purposes, including transmission of protests, forms relating to in-bond movements (CBP Form 7512), and applications for FTZ admission (CBP Form 214).

PART 146—FOREIGN TRADE ZONES

26. The general authority citation for part 146 continues to read as follows:

Authority: 19 U.S.C. 66, 81a–81u, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624.

27. Amend § 146.32 by:

a. Removing all references to ''Customs Form 214'' and adding in their place ''CBP Form 214'';

b. Redesignating paragraph (a) as paragraph (a)(1); and

c. Adding a new paragraph (a)(2).

The new paragraph (a)(2) reads as follows:

§ 146.32 Application and permit for admission of merchandise.

(a)(1) * * *

(2) *CBP Form 214 and Importer Security Filing submitted via a single electronic transmission.* If an Importer Security Filing is filed pursuant to part 149 of this chapter via the same electronic transmission as CBP Form 214, the filer is only required to provide the following fields once to be used for Importer Security Filing and CBP Form 214 purposes:

(i) Country of origin; and

(ii) Commodity HTSUS number if this number is provided at the 10 digit level.

* * * * *

28. Add part 149 to chapter I to read as follows:

PART 149—IMPORTER SECURITY FILING

Sec.

149.1 Definitions.
149.2 Importer security filing—requirement, time of transmission, verification of information, update, withdrawal.
149.3 Data elements.

149.4 Bulk and break bulk cargo.
149.5 Authorized agents.
149.6 Entry and/or entry summary documentation and Importer Security Filing submitted via a single electronic transmission.

Authority: 5 U.S.C. 301; 6 U.S.C. 943; 19 U.S.C. 66, 1624, 2071 note.

§ 149.1 Definitions.

(a) *Importer.* For purposes of this part, ''importer'' means the party causing goods to arrive within the limits of a port in the United States. For foreign cargo remaining on board (FROB), the importer is construed as the carrier. For immediate exportation (IE) and transportation and exportation (T&E) in-bond shipments, and goods to be delivered to a foreign trade zone (FTZ), the importer is construed as the party filing the IE, T&E, or FTZ documentation.

(b) *Importation.* For purpose of this part, ''importation'' means the point at which cargo arrives within the limits of a port in the United States.

(c) *Bulk cargo.* For purposes of this part, ''bulk cargo'' is defined as homogeneous cargo that is stowed loose in the hold and is not enclosed in any container such as a box, bale, bag, cask, or the like. Such cargo is also described as bulk freight. Specifically, bulk cargo is composed of either:

(1) Free flowing articles such as oil, grain, coal, ore, and the like, which can be pumped or run through a chute or handled by dumping; or

(2) Articles that require mechanical handling such as bricks, pig iron, lumber, steel beams, and the like.

(d) *Break bulk cargo.* For purposes of this part, ''break bulk cargo'' is defined as cargo that is not containerized, but which is otherwise packaged or bundled.

§ 149.2 Importer security filing—requirement, time of transmission, verification of information, update, withdrawal.

(a) *Importer security filing required.* With the exception of any bulk cargo pursuant to § 149.4(a) of this part, the importer, as defined in § 149.1 of this part, or authorized agent (*see* § 149.5 of this part) must submit in English the Importer Security Filing elements prescribed in § 149.3 of this part within the time specified in paragraph (b) of this section via a CBP-approved electronic interchange system.

(b) *Time of transmission.* With the exception of any break bulk cargo pursuant to § 149.4(b) of this part and foreign cargo remaining on board (FROB), CBP must receive the Importer Security Filing no later than 24 hours before the cargo is laden aboard the vessel at the foreign port. For FROB, CBP must receive the Importer Security Filing prior to lading aboard the vessel at the foreign port.

(c) *Verification of information.* Where the party electronically presenting to CBP the Importer Security Filing required in paragraph (a) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what the party reasonably believes to be true.

(d) *Update of Importer Security Filing.* The party who submitted the Importer Security Filing pursuant to paragraph (a) of this section must update the filing if, after the filing is submitted and before the goods enter the limits of a port in the United States, any of the information submitted changes or more accurate information becomes available.

(e) *Withdrawal of Importer Security Filing.* If, after an Importer Security Filing is submitted pursuant to paragraph (a) of this section, the goods associated with the Importer Security Filing are no longer intended to be imported to the United States, the party who submitted the Importer Security Filing must withdraw the Importer Security Filing and transmit to CBP the reason for such withdrawal.

§ 149.3 Data elements.

(a) *Shipments intended to be entered into the United States and shipments intended to be delivered to a foreign trade zone.* Except as otherwise provided for in paragraph (b) of this section, the following elements must be provided for each good listed at the 6 digit HTSUS number at the lowest bill of lading level (i.e., at the house bill of lading level, if applicable). The manufacturer (or supplier) name and address, country of origin, and commodity HTSUS number must be linked to one another at the line item level.

(1) *Manufacturer (or supplier) name and address.* Name and address of the entity that last manufactures, assembles, produces, or grows the commodity or name and address of the supplier of the finished goods in the country from which the goods are leaving. In the alternative the name and address of the manufacturer (or supplier) that is currently required by the import laws, rules and regulations of the United States (*i.e.*, entry procedures) may be provided (this is the information that is used to create the existing manufacturer identification (MID) number for entry purposes).

(2) *Seller name and address.* Name and address of the last known entity *by whom* the goods are sold or agreed to be sold. If the goods are to be imported otherwise than in pursuance of a purchase, the name and address of the owner of the goods must be provided.

(3) *Buyer name and address.* Name and address of the last known entity *to whom* the goods are sold or agreed to be sold. If the goods are to be imported otherwise than in pursuance of a purchase, the name and address of the owner of the goods must be provided.

(4) *Ship to name and address.* Name and address of the first deliver-to party scheduled to physically receive the goods after the goods have been released from customs custody.

(5) *Container stuffing location.* Name and address(es) of the physical location(s) where the goods were stuffed into the container. For break bulk shipments, as defined in § 149.1 of this part, the name and address(es) of the physical location(s) where the goods were made ''ship ready'' must be provided.

(6) *Consolidator (stuffer) name and address.* Name and address of the party who stuffed the container or arranged for the stuffing of the container. For break bulk shipments, as defined in § 149.1 of this part, the name and address of the party who made the goods ''ship ready'' or the party who arranged for the goods to be made ''ship ready'' must be provided.

(7) *Importer of record number/Foreign trade zone applicant identification number.* Internal Revenue Service (IRS) number, Employer Identification Number (EIN), Social Security Number (SSN), or CBP assigned number of the entity liable for payment of all duties and responsible for meeting all statutory and regulatory requirements incurred as a result of importation. For goods intended to be delivered to a foreign trade zone (FTZ), the IRS number, EIN, SSN, or CBP assigned number of the party filing the FTZ documentation with CBP must be provided.

(8) *Consignee number(s).* Internal Revenue Service (IRS) number, Employer Identification Number (EIN), Social Security Number (SSN), or CBP assigned number of the individual(s) or firm(s) in the United States on whose account the merchandise is shipped.

(9) *Country of origin.* Country of manufacture, production, or growth of the article, based upon the import laws,

rules and regulations of the United States.

(10) *Commodity HTSUS number*. Duty/statistical reporting number under which the article is classified in the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS number must be provided to the 6 digit level. The HTSUS number may be provided up to the 10 digit level. This element can only be used for entry purposes if it is provided at the 10 digit level or greater by the importer of record or its licensed customs broker.

(b) *FROB, IE shipments, and T&E shipments*. For shipments consisting entirely of foreign cargo remaining on board (FROB) and shipments intended to be transported in-bond as an immediate exportation (IE) or transportation and exportation (T&E), the following elements must be provided for each good listed at the 6 digit HTSUS number at the lowest bill of lading level (*i.e.*, at the house bill of lading level, if applicable).

(1) *Booking party name and address*. Name and address of the party who is paying for the transportation of the goods.

(2) *Foreign port of unlading*. Port code for the foreign port of unlading at the intended final destination.

(3) *Place of delivery*. City code for the place of delivery.

(4) *Ship to name and address*. Name and address of the first deliver-to party scheduled to physically receive the goods after the goods have been released from customs custody.

(5) *Commodity HTSUS number*. Duty/statistical reporting number under which the article is classified in the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS number must be provided to the 6 digit level. The HTSUS number may be provided to the 10 digit level.

§ 149.4 Bulk and break bulk cargo.

(a) *Bulk cargo exempted from filing requirement*. For bulk cargo that is exempt from the requirement set forth in § 4.7(b)(2) of this chapter that a cargo declaration be filed with Customs and Border Protection (CBP) 24 hours before such cargo is laden aboard the vessel at the foreign port, importers, as defined in § 149.1 of this part, of bulk cargo are also exempt from filing an Importer Security Filing with respect to that cargo.

(b) *Break bulk cargo exempted from time requirement*. For break bulk cargo that is exempt from the requirement set forth in § 4.7(b)(2) of this chapter for carriers to file a cargo declaration with Customs and Border Protection (CBP) 24 hours before such cargo is laden aboard the vessel at the foreign port, importers, as defined in § 149.1 of this part, of break bulk cargo are also exempt with respect to that cargo from the requirement set forth in § 149.2 of this part to file an Importer Security Filing with CBP 24 hours before such cargo is laden aboard the vessel at the foreign port. Any importers of break bulk cargo that are exempted from the filing requirement of § 149.2 of this part must present the Importer Security Filing to CBP 24 hours prior to the cargo's arrival in the United States. These importers must still report 24 hours in advance of loading any containerized or non-qualifying break bulk cargo they will be importing.

§ 149.5 Authorized agents.

(a) *Eligibility*. To be qualified to file Importer Security Filing information electronically, a party must establish the communication protocol required by Customs and Border Protection for properly presenting the Importer Security Filing through the approved data interchange system. If the Importer Security Filing and entry or entry summary are provided via a single electronic transmission to CBP pursuant to § 149.6(b) of this part, the party making the transmission must be an importer acting on its own behalf or a licensed customs broker. Also, any Importer Security Filing filer must possess a basic importation and entry bond containing all the necessary provisions of § 113.62 of this chapter, an international carrier bond containing all the necessary provisions of § 113.64 of this chapter, or a foreign trade zone operator bond containing all the necessary provisions of § 113.73 of this chapter.

(b) *Powers of attorney*. Authorized agents must retain powers of attorney and make them available to representatives of Customs and Border Protection upon request.

§ 149.6 Entry and/or entry summary documentation and Importer Security Filing submitted via a single electronic transmission.

If the Importer Security Filing is filed pursuant to § 149.2 of this part via the same electronic transmission as entry and/or entry summary documentation pursuant to § 142.3 of this chapter, the importer is only required to provide the following fields once to be used for Importer Security Filing, entry, and/or entry summary purposes, as applicable:

(a) Importer of record number;

(b) Consignee number;

(c) Country of origin; and

(d) Commodity HTSUS number if this number is provided at the 10 digit level.

PART 192—EXPORT CONTROL

29. The general authority citation for part 192 continues to read as follows:

Authority: 19 U.S.C. 66, 1624, 1646c. Subpart A also issued under 19 U.S.C. 1627a, 1646a, 1646b; subpart B also issued under 13 U.S.C. 303; 19 U.S.C. 2071 note; 46 U.S.C. 91.

§ 192.14 [Amended]

29. Amend § 192.14(c)(4)(ii) by removing the reference to ''§ 113.64(g)(2)'' and adding in its place ''§ 113.64(k)(2)''.

Dated: December 14, 2007.

W. Ralph Basham,

Commissioner, Customs and Border Protection.

Approved:

Dated: December 21, 2007.

Michael Chertoff,

Secretary.

[FR Doc. E7–25306 Filed 12–31–07; 8:45 am]

BILLING CODE 9111–14–P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

32 CFR Part 1701

Privacy Act Regulations

AGENCY: Office of the Director of National Intelligence.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides the public the guidelines under which the Office of the Director of National Intelligence (ODNI) will implement the Privacy Act of 1974, 5 U.S.C. 552a, as amended. The proposed regulation describes agency policies for collecting and maintaining personally identifiable records and processes for administering requests for records under the Privacy Act. In addition, as permitted by the Privacy Act, subsections (j) and (k), and in accordance with the rulemaking procedures of the Administrative Procedures Act, 5 U.S.C. 553, the ODNI proposes exempting several new systems of records of the National Counterterrorism Center (NCTC), the Office of the National Counterintelligence Executive (ONCIX), and the Office of the Inspector General (OIG) from various provisions of the Act. The ODNI further proposes that exemptions invoked by agencies whose records the ODNI receives continue in effect where reasons for the exemption remain valid. Subpart C of this regulation proposes routine uses applicable to more than one ODNI Privacy Act system of records.

DATES: Submit comments on or before February 11, 2008.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov*.

Mail: Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Hackett, Director, Information Management Office (703) 482–3610.

SUPPLEMENTARY INFORMATION: The ODNI was created by the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458, 118 Stat. 3638 (Dec. 17, 2004). The first Director of National Intelligence, Ambassador John D. Negroponte, was sworn in to Office on April 21, 2005 and the ODNI began operations on April 22, 2005. Because the majority of documents held by the ODNI at its inception were previously maintained by the Central Intelligence Agency (CIA) and because the ODNI did not have a Privacy staff upon stand-up, records were administered under the CIA's Privacy Act authorities and using CIA's administrative resources. At this time, the ODNI proposes its own Privacy Act regulations. Additionally, in compliance with the Privacy Act, 5 U.S.C. 552a(e)(4), the ODNI describes in the notice section of today's **Federal Register** the following twelve new systems of records: NCTC Access Authorization Records, NCTC Human Resources Management System, NCTC Telephone Directory, NCTC Knowledge Repository (SANCTUM), NCTC Online (NOL), NCTC Tacit Knowledge Management Records, NCTC Terrorism Analysis Records, NCTC Terrorist Identities Records, NCTC Partnership Management Records, ONCIX Counterintelligence Damage Assessment Records, OIG Experts Contact Records, OIG Human Resources Records and OIG Investigation and Interview Records.

Regulatory Flexibility Act

This proposed rule affects the manner in which ODNI collects and maintains information about individuals. ODNI certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, no regulatory flexibility analysis is required for this rule.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the ODNI to comply with small entity requests for information and advice about compliance with statutes and regulations within the ODNI jurisdiction. Any small entity that has a question regarding this document may address it to the information contact listed above. Further information regarding SBREFA is available on the Small Business Administration's Web page at *http://www.sga.gov/advo/law/law_lib.html*.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the ODNI consider the impact of paperwork and other burdens imposed on the public associated with the collection of information. There are no information collection requirements associated with this proposed rule and therefore no analysis of burden is required.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866. This rule will not have an annual effect on the economy of $100 million or more or otherwise adversely affect the economy or sector of the economy in a material way; will not create inconsistency with or interfere with other agency action; will not materially alter the budgetary impact of entitlements, grants, fees or loans or the right and obligations of recipients thereof; or raise legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order. Accordingly, further regulatory evaluation is not required.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 109 Stat. 48 (Mar. 22, 1995), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule imposes no Federal mandate on any State, local, or tribal government or on the private sector. Accordingly, no UMRA analysis of economic and regulatory alternatives is required.

Executive Order 13132, Federalism

Executive Order 13132 requires ODNI to examine the implications for the distribution of power and responsibilities among the various levels of government resulting from this proposed rule. ODNI concludes that the proposed rule does not affect the rights, roles and responsibilities of the States, involves no preemption of State law and does not limit State policymaking discretion. This rule has no federalism implications as defined by the Executive Order.

Environmental Impact

The ODNI has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended, 42 U.S.C. 6362. This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 32 CFR Part 1701

Records and Privacy Act.

For the reasons set forth in the preamble, ODNI proposes to add part 1701 as follows:

PART 1701—ADMINISTRATION OF RECORDS UNDER THE PRIVACY ACT OF 1974

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

Sec.

1701.1 Purpose, scope, applicability.
1701.2 Definitions.
1701.3 Contact for general information and requests.
1701.4 Privacy Act responsibilities/policy.
1701.5 Collection and maintenance of records.
1701.6 Disclosure of records/policy.
1701.7 Requests for notification of and access to records.
1701.8 Requests to amend or correct records.
1701.9 Requests for an accounting of record disclosures.
1701.10 ODNI responsibility for responding to access requests.
1701.11 ODNI responsibility for responding to requests for amendment or correction.
1701.12 ODNI responsibility for responding to requests for accounting.
1701.13 Special procedures for medical/psychiatric/psychological testing records.
1701.14 Appeals.
1701.15 Fees.
1701.16 Contractors.
1701.17 Standards of conduct.

Subpart B—Exemption of Records Systems Under the Privacy Act

1701.20 Exemption policies.
1701.21 Exemption of National Counterterrorism Center (NCTC) systems of records.
1701.22 Exemption of Office of the National Counterintelligence Executive (ONCIX) systems of records.

1701.23 Exemption of Office of Inspector General (OIG) systems of records.

Subpart C—Routine Uses Applicable to More Than One ODNI System of Records

1701.30 Policy and applicability.
1701.31 General routine uses.

Authority: 50 U.S.C. 401–442; 5 U.S.C. 552a.

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

§ 1701.1 Purpose, scope, applicability.

(a) *Purpose.* This subpart establishes the policies and procedures the Office of the Director of National Intelligence (ODNI) will follow in implementing the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, as amended. This subpart sets forth the procedures ODNI must follow in collecting and maintaining personal information from or about individuals, as well as procedures by which individuals may request to access or amend records about themselves and request an accounting of disclosures of those records by the ODNI. In addition, this subpart details parameters for disclosing personally identifiable information to persons other than the subject of a record.

(b) *Scope.* The provisions of this subpart apply to all records in systems of records maintained by ODNI directorates, centers, mission managers and other sub-organizations [hereinafter called ''components''] that are retrieved by an individual's name or personal identifier.

(c) *Applicability.* This subpart governs the following individuals and entities:

(1) All ODNI staff and components must comply with this subpart. The terms ''staff'' and ''component'' are defined in § 1701.2.

(2) Unless specifically exempted, this subpart also applies to advisory committees and councils within the meaning of the Federal Advisory Committee Act (FACA) which provide advice to: any official or component of ODNI; or the President, and for which ODNI has been delegated responsibility for providing service.

(d) *Relation to Freedom of Information Act.* The ODNI shall provide a subject individual under this subpart all records which are otherwise accessible to such individual under the provisions of the Freedom of Information Act, 5 U.S.C. 552.

§ 1701.2 Definitions

For purposes of this subpart, the following terms have the meanings indicated:

(a) *Access* means making a record available to a subject individual.

(b) *Act* means the Privacy Act of 1974.

(c) *Agency* means the ODNI or any of its components.

(d) *Component* means any directorate, mission manager, or other sub-organization in the ODNI or reporting to the Director, that has been designated or established in the ODNI pursuant to Section 103 of the National Security Act of 1947, as amended, including the National CounterterrorismCenter (NCTC), the National Counterproliferation Center (NCPC) and the Office of the National Counterintelligence Executive (ONCIX), or such other offices and officials as may be established by law or as the Director may establish or designate in the ODNI, for example, the Program Manager, Information Sharing Environment (ISE) and the Inspector General (IG).

(e) *Disclosure* means making a record about an individual available to or releasing it to another party.

(f) *FOIA* means the Freedom of Information Act.

(*g) Individual,* when used in connection with the Privacy Act, means a living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. It does not include sole proprietorships, partnerships, or corporations.

(h) *Information* means information about an individual and includes, but is not limited to, vital statistics; race, sex, or other physical characteristics; earnings information; professional fees paid to an individual and other financial information; benefit data or claims information; the social security number, employer identification number, or other individual identifier; address; phone number; medical information; and information about marital, family or other personal relationships.

(i) *Maintain* means to establish, collect, use, or disseminate when used in connection with the term *record;* and, to have control over or responsibility for a system of records, when used in connection with the term *system of records.*

(j) *Notification* means communication to an individual whether he is a subject *individual*

(k) *Office of the Director of National Intelligence* means any and all of the *components* of the ODNI.

(l) *Record* means any item, collection, or grouping of information about an individual that is maintained by the ODNI including, but not limited to, information such as an individual's education, financial transactions, medical history, and criminal or employment history that contains the individual's name, or an identifying number, symbol, or any other identifier assigned to an individual. When used in this subpart, record means only a record that is in a system of records.

(m) *Routine use* means the disclosure of a record outside ODNI, without the consent of the subject individual, for a purpose which is compatible with the purpose for which the record was collected. It does not include disclosure which the Privacy Act otherwise permits pursuant to subsection (b) of the Act.

(n) *Staff* means any current or former regular or special employee, detailee, assignee, employee of a contracting organization, or independent contractor of the ODNI or any of its components.

(o) *Subject individual* means the person to whom a record pertains (or ''record subject.'').

(p) *System of records* means a group of records under ODNI's control from which information about an individual is retrieved by the name of the individual or by an identifying number, symbol, or other particular assigned to the individual. Single records or groups of records which are not retrieved by a personal identifier are not part of a system of records,

§ 1701.3 Contact for general information and requests.

Privacy Act requests and appeals and inquiries regarding this subpart or about ODNI's Privacy Act program must be submitted in writing to the Director, Information Management Office (D/IMO), Office of the Director of National Intelligence, Washington, DC 20511 (by mail or by facsimile at 703–482–2144) or to the contact designated in the specific Privacy Act System of Records Notice. Privacy Act requests with the required identification statement and signature pursuant to paragraphs (d) and (e) of § 1701.7 of this subpart must be filed in original form.

§ 1701.4 Privacy Act responsibilities/policy.

The ODNI will administer records about individuals consisten t with statutory, administrative, and program responsibilities. Subject to exemptions authorized by the Act, ODNI will collect, maintain and disclose records as required and will honor subjects' rights to view and amend records and to obtain an accounting of disclosures.

§ 1701.5 Collection and maintenance of records.

(a) ODNI will not maintain a record unless:

(1) It is relevant and necessary to accomplish an ODNI function required by statute or Executive Order;

(2) It is acquired to the greatest extent practicable from the subject individual when ODNI may use the record to make any determination about the individual;

(3) The individual providing the record is informed of the authority for providing the record (including whether providing the record is mandatory or voluntary), the principal purpose for maintaining the record, the routine uses for the record, and what effect refusing to provide the record may have;

(4) It is maintained with such accuracy, relevance, timeliness and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

(b) Except as to disclosures made to an agency or made under the FOIA, ODNI will make reasonable efforts prior to disseminating a record about an individual, to ensure that the record is accurate, relevant, timely, and complete;

(c) ODNI will not maintain or develop a system of records that is not the subject of a current or planned public notice;

(d) ODNI will not adopt a routine use of information in a system without notice and invitation to comment published in the **Federal Register** at least 30 days prior to final adoption of the routine use;

(e) To the extent ODNI participates with a non-Federal agency in matching activities covered by section (8) of the Act, ODNI will publish notice of the matching program in the **Federal Register**;

(f) ODNI will not maintain a record which describes how an individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the subject individual, or unless pertinent to and within the scope of an authorized law enforcement activity;

(g) When required by the Act, ODNI will maintain an accounting of all disclosures of records by the ODNI to persons, organizations or agencies;

(h) Each ODNI component shall implement administrative, physical and technical controls to prevent unauthorized access to its systems of records, to prevent unauthorized disclosure of records, and to prevent physical damage to or destruction of records;

(i) ODNI will establish rules and instructions for complying with the requirements of the Privacy Act, including notice of the penalties for non-compliance, applicable to all persons involved in the design, development, operation or maintenance of any system of records.

§ 1701.6 Disclosure of records/policy.

Consistent with 5 U.S.C. 552a(b), ODNI will not disclose any record which is contained in a system of records by any means (written, oral or electronic) without the consent of the subject individual unless disclosure without consent is made for reasons permitted under applicable law, including:

(a) Internal agency use on a need-to-know basis;

(b) Release under the Freedom of Information Act (FOIA) if not subject to protection under the FOIA exemptions;

(c) A specific ''routine use'' as described in the ODNI's published compilation of Blanket Routine Uses or in specific published Privacy Act Systems of Records Notices (available at *http://www.dni.gov*);

(d) Release to the Bureau of the Census, the National Archives and Records Administration, or the Government Accountability Office, for the performance of those entities' statutory duties;

(e) Release in non-identifiable form to a recipient who has provided written assurance that the record will be used solely for statistical research or reporting;

(f) Compelling circumstances in which the health or safety of an individual is at risk;

(g) Release pursuant to the order of a court of competent jurisdiction or to a governmental entity for a specifically documented civil or criminal law enforcement activity;

(h) Release to either House of Congress or to any committee, subcommittee or joint committee thereof to the extent of matter within its jurisdiction;

(i) Release to a consumer reporting agency in accordance with section 3711(e) of Title 31.

§ 1701.7 Requests for notification of and access to records.

(a) *How to request.* Unless records are not subject to access (see paragraph (b) of this section), individuals seeking access to records about themselves may submit a request in writing to the D/IMO, as directed in § 1701.3 of this subpart, or to the contact designated in the specific Privacy Act System of Records Notice. To ensure proper routing and tracking, requesters should mark the envelope ''Privacy Act Request.''

(b) *Records not subject to access.* The following records are not subject to review by subject individuals:

(1) Records in ODNI systems of records that ODNI has exempted from access and correction under the Privacy Act, 5 U.S.C. 552a(j) or (k), by notice published in the **Federal Register**, or where those exemptions require that ODNI can neither confirm nor deny the existence or nonexistence of responsive records (see § 1701.10(c)(iii)).

(2) Records in ODNI systems of records that another agency has exempted from access and correction under the Privacy Act, 5 U.S.C. 552a(j) or (k), by notice published in the **Federal Register**, or where those exemptions require that ODNI can neither confirm nor deny the existence or nonexistence of responsive records (see § 1701.10(c)(iii)).

(c) *Description of records.* Individuals requesting access to records about themselves should, to the extent possible, describe the nature of the records, why and under what circumstances the requester believes ODNI maintains the records, the time period in which they may have been compiled and, ideally, the name or identifying number of each Privacy Act System of Records in which they might be included. The ODNI publishes notices in the **Federal Register** that describe its systems of records. The **Federal Register** compiles these notices biennially and makes them available in hard copy at large reference libraries and in electronic form at the Government Printing Office's World Wide Web site, *http://www.gpoaccess.gov.*

(d) *Verification of identity.* A written request for access to records about oneself must include full (legal) name, current address, date and place of birth, and citizenship status. Aliens lawfully admitted for permanent residence must provide their Alien Registration Number and the date that status was acquired. The D/IMO may request additional or clarifying information to ascertain identity. Access requests must be signed and the signature either notarized or submitted under 28 U.S.C. 1746, authorizing statements made under penalty of perjury as a substitute for notarization.

(e) *Verification of guardianship or representational relationship.* The parent or guardian of a minor, the guardian of an individual under judicial disability, or an attorney retained to represent an individual shall provide, in addition to establishing the identity of the minor or individual represented as required in paragraph (d) of this section, evidence of such representation by submitting a certified copy of the minor's birth certificate, court order, or representational agreement which establishes the relationship and the requester's identity.

(f) ODNI will permit access to or provide copies of records to individuals other than the record subject (or the subject's legal representative) only with the requester's written authorization.

§ 1701.8 Requests to amend or correct records.

(a) *How to request.* Unless the record is not subject to amendment or correction (see paragraph (b) of this section), individuals (or guardians or representatives acting on their behalf) may make a written amendment or correction request to the D/IMO, as directed in § 1701.3 of this subpart, or to the contact designated in a specific Privacy Act System of Records. Requesters seeking amendment or correction should identify the particular record or portion subject to the request, explain why an amendment or correction is necessary, and provide the desired replacement language. Requesters may submit documentation supporting the request to amend or correct. Requests for amendment or correction will lapse (but may be re-initiated with a new request) if all necessary information is not submitted within forty-five (45) days of the date of the original request. The identity verification procedures of paragraphs (d) and (e) of § 1701.7 of this subpart apply to amendment requests.

(b) *Records not subject to amendment or correction.* (1) Records which are determinations of fact or evidence received (*e.g.*, transcripts of testimony given under oath or written statements made under oath; transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings; pre-sentence records that originated with the courts) and

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

§ 1701.9 Requests for an accounting of record disclosures.

(a) *How to request.* Except where accountings of disclosures are not required to be kept (see paragraph (b) of this section), record subjects (or their guardians or representatives) may request an accounting of disclosures that have been made to another person, organization, or agency as permitted by the Privacy Act at 5 U.S.C. 552a(b). This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. Requests for accounting should identify each record in question and must be made in writing to the D/IMO, as indicated in § 1701.3 of this subpart, or to the contact designated in a specific Privacy Act System of Records.

(b) *Accounting not required.* The ODNI is not required to provide accounting of disclosure in the following circumstances:

(1) Disclosures for which the Privacy Act does not require accounting, *i.e.*, disclosures to employees within the agency and disclosures made under the FOIA;

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from the respective head of the law enforcement agency specifying the law enforcement activities for which the disclosures are sought; or

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

§ 1701.10 ODNI responsibility for responding to access requests.

(a) *Acknowledgement of requests.* Upon receipt of a request providing all necessary information, the D/IMO shall acknowledge receipt to the requester and provide an assigned request number for further reference.

(b) *Tasking to component.* Upon receipt of a proper access request, the D/IMO shall provide a copy of the request to the point of contact (POC) in the ODNI component with which the records sought reside. The POC within the component shall determine whether responsive records exist and, if so, recommend to the D/IMO:

(1) Whether access should be denied in whole or part (and the legal basis for denial under the Privacy Act); or

(2) Whether coordination with or referral to another component or federal agency is appropriate.

(c) *Coordination and referrals*—(1) *Examination of records.* If a component POC receiving a request for access determines that an originating agency or other agency that has a substantial interest in the record is best able to process the request (*e.g.*, the record is governed by another agency's regulation, or another agency originally generated or classified the record), the POC shall forward to the D/IMO all records necessary for coordination with or referral to the other component or agency, as well as specific recommendations with respect to any denials.

(2) *Notice of referral.* Whenever the D/IMO refers all or any part of the responsibility for responding to a request to another agency, the D/IMO shall notify the requester of the referral.

(3) *Effect of certain exemptions.* (i) In processing a request, the ODNI shall decline to confirm or deny the existence or nonexistence of any responsive records whenever the fact of their existence or nonexistence:

(A) May reveal protected intelligence sources and collection methods (50 U.S.C. 403–1(i)); or

(B) Is classified and subject to an exemption appropriately invoked by ODNI or another agency under subsections (j) or (k) of the Privacy Act.

(ii) In such event, the ODNI will inform the requester in writing and advise the requestor of the right to file an administrative appeal of any adverse determination.

(d) *Time for response.* The D/IMO shall respond to a request for access promptly upon receipt of recommendations from the POC and determinations resulting from any necessary coordination with or referral to another agency. The D/IMO may determine to update a requester on the status of a request that remains outstanding longer than reasonably expected.

(e) *ODNI action on requests for access*—(1) *Grant of access.* Once the D/IMO determines to grant a request for access in whole or in part, the D/IMO shall notify the requester in writing and come to agreement with the requester about how to effect access, whether by on-site review or duplication of the records. If a requester is accompanied by another person, the requester shall be required to authorize in writing any discussion of the records in the presence of the other person.

(2) *Denial of access.* The D/IMO shall notify the requester in writing when an adverse determination is made denying a request for access in any respect. Adverse determinations, or denials, consist of a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Privacy Act; or a determination that the existence of a record can neither be confirmed nor denied. The notification letter shall state:

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

(ii) The procedure for appeal of the denial under § 1701.14 of this subpart.

§ 1701.11 ODNI responsibility for responding to requests for amendment or correction.

(a) *Acknowledgement of request.* The D/IMO shall acknowledge receipt of a request for amendment or correction of records in writing and provide an assigned request number for further reference.

(b) *Tasking of component.* Upon receipt of a proper request to amend or correct a record, the D/IMO shall forward the request to the POC in the component maintaining the record. The POC shall promptly evaluate the proposed amendment or correction in light of any supporting justification and recommend that the D/IMO grant or deny the request or, if the request involves a record subject to correction by an originating agency, refer the request to the other agency.

(c) *Action on request for amendment or correction.* (1) If the POC determines that the request for amendment or correction is justified, in whole or in part, the D/IMO shall promptly:

(i) Make the amendment, in whole or in part, as requested and provide the requester a written description of the amendment or correction made; and

(ii) Provide written notice of the amendment or correction to all persons, organizations or agencies to which the record has been disclosed (if an accounting of the disclosure was made);

(2) Where the D/IMO has referred an amendment request to another agency, the D/IMO, upon confirmation from that agency that the amendment has been effected, shall provide written notice of the amendment or correction to all persons, organizations or agencies to which ODNI previously disclosed the record.

(3) If the POC determines that the requester's records are accurate, relevant, timely and complete, and that no basis exists for amending or correcting the record, either in whole or in part, the D/IMO shall inform the requester in writing of:

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

(ii) The procedure for appeal of the denial under § 1701.15 of this subpart.

§ 1701.12 ODNI responsibility for responding to requests for accounting.

(a) *Acknowledgement of request.* Upon receipt of a request for accounting, the D/IMO shall acknowledge receipt of the request in writing and provide an assigned request number for further reference.

(b) *Tasking of component.* Upon receipt of a request for accounting, the D/IMO shall forward the request to the POC in the component maintaining the record. The POC shall work with the component's information management officer and the systems administrator to generate the requested disclosure history.

(c) *Action on request for accounting.* The D/IMO will notify the requester when the accounting is available for on-site review or transmission in paper or electronic medium.

(d) *Notice of court-ordered disclosures.* The D/IMO shall make reasonable efforts to notify an individual whose record is disclosed pursuant to court order. Notice shall be made within a reasonable time after receipt of the order; however, when the order is not a matter of public record, the notice shall be made only after the order becomes public. Notice shall be sent to the individual's last known address and include a copy of the order and a description of the information disclosed. No notice shall be made regarding records disclosed from a criminal law enforcement system that has been exempted from the notice requirement.

(e) *Notice of emergency disclosures.* ODNI shall notify an individual whose record it discloses under compelling circumstances affecting health or safety. This notice shall be mailed to the individual's last known address and shall state the nature of the information disclosed; the person, organization, or agency to which it was disclosed; the date of disclosure; and the compelling circumstances justifying the disclosure. This provision shall not apply in circumstances involving classified records that have been exempted from disclosure pursuant to subsection (j) or (k) of the Privacy Act.

§ 1701.13 Special procedures for medical/psychiatric/psychological records.

Current and former ODNI employees, including current and former employees of ODNI contractors, and unsuccessful applicants for employment may seek access to their medical, psychiatric records, or psychological testing records by writing to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505, and provide identifying information as required by paragraphs (d) and (e) of § 1701.7 of this subpart. The Central Intelligence Agency's Privacy Act Regulations will govern administration of these types of records, including appeals from adverse determinations.

§ 1701.14 Appeals.

(a) Individuals may appeal denials of requests for access, amendment, or accounting by submitting a written request for review to the Director, Information Management Office (D/IMO) at the Office of the Director of National Intelligence, Washington, DC 20511. The words ''PRIVACY ACT APPEAL'' should be written on the letter and the envelope. The appeal must be signed by the record subject or legal representative. No personal appearance or hearing on appeal will be allowed.

(b) The D/IMO must receive the appeal letter within 45 calendar days of the date the requester received the notice of denial. The postmark is conclusive as to timeliness. Copies of correspondence from ODNI denying the request to access or amend the record should be included with the appeal, if possible. At a minimum, the appeal letter should identify:

(1) The records involved;

(2) The date of the initial request for access to or amendment of the record;

(3) The date of ODNI's denial of that request; and

(4) A statement of the reasons supporting the request for reversal of the initial decision. The statement should focus on information not previously available or legal arguments demonstrating that the ODNI's decision is improper.

(c) Following receipt of the appeal, the Director of Intelligence Staff (DIS) shall, in consultation with the Office of General Counsel, make a final determination in writing on the appeal.

(d) Where ODNI reverses an initial denial, the following procedures apply:

(1) If ODNI reverses an initial denial of access, the procedures in paragraph (e)(1) of § 1701.10 of this subpart will apply.

(2) If ODNI reverses its initial denial of a request to amend a record, the POC will ensure that the record is corrected as requested, and the D/IMO will inform the individual of the correction, as well as all persons, organizations and agencies to which ODNI had disclosed the record.

(3) If ODNI reverses its initial denial of a request for accounting, the POC will notify the requester when the accounting is available for on-site review or transmission in paper or electronic medium.

(e) If ODNI upholds its initial denial or reverses in part (i.e., only partially granting the request), ODNI'S notice of final agency action will inform the requester of the following rights:

(1) Judicial review of the denial under 5 U.S.C. 552a(g)(1), as limited by 5 U.S.C. 552a(g)(5).

(2) Opportunity to file a statement of disagreement with the denial, citing the reasons for disagreeing with ODNI's final determination not to correct or amend a record. The requester's

statement of disagreement should explain why he disputes the accuracy of the record.

(3) Inclusion in one's record of copies of the statement of disagreement and the final denial, which ODNI will provide to all subsequent recipients of the disputed record, as well as to all previous recipients of the record where an accounting was made of prior disclosures of the record.

§ 1701.15 Fees.

ODNI shall charge fees for duplication of records under the Privacy Act, 5 U.S.C. 552a, in the same way in which it will charge for duplication of records under § 1700.7(g), ODNI's regulation implementing the fee provision of the Freedom of Information Act, 5 U.S.C. 552.

§ 1701.16 Contractors.

(a) Any approved contract for the operation of a Privacy Act system of records to accomplish a function of the ODNI will contain the Privacy Act provisions prescribed by the Federal Acquisition Regulations (FAR) at 48 CFR Part 24, requiring the contractor to comply with the Privacy Act and this subpart. The contracting component will be responsible for ensuring that the contractor complies with these contract requirements. This section does not apply to systems of records maintained by a contractor as a function of management discretion, e.g., the contractor's personnel records.

(b) Where the contract contains a provision requiring the contractor to comply with the Privacy Act and this subpart, the contractor and any employee of the contractor will be considered employees of the ODNI for purposes of the criminal penalties of the Act, 5 U.S.C. 552a(i).

§ 1701.17 Standards of conduct.

(a) *General.* ODNI will ensure that staff are aware of the provisions of the Privacy Act and of their responsibilities for protecting personal information that ODNI collects and maintains, consistent with §§ 1701.5 and 1701.6 of this subpart.

(b) *Criminal penalties*—(1) *Unauthorized disclosure.* Criminal penalties may be imposed against any ODNI staff who, by virtue of employment, has possession or access to ODNI records which contain information identifiable with an individual, the disclosure of which is prohibited by the Privacy Act or by these rules, and who, knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it.

(2) *Unauthorized maintenance.* Criminal penalties may be imposed against any ODNI staff who willfully maintains a system of records without meeting the requirements of subsection (e)(4) of the Privacy Act, 5 U.S.C. 552a. The D/IMO, the Civil Liberties Protection Officer, the General Counsel, and the Inspector General are authorized independently to conduct such surveys and inspect such records as necessary from time to time to ensure that these requirements are met.

(3) *Unauthorized requests.* Criminal penalties may be imposed upon any person who knowingly and willfully requests or obtains any record concerning an individual from the ODNI under false pretenses.

Subpart B—Exemption of Record Systems Under the Privacy Act

§ 1701.20 Exemption policies.

(a) *General.* The DNI has determined that invoking exemptions under the Privacy Act and continuing exemptions previously asserted by agencies whose records ODNI receives is necessary: to ensure against the release of classified information essential to the national defense or foreign relations; to protect intelligence sources and methods; and to maintain the integrity and effectiveness of intelligence, investigative and law enforcement processes. Accordingly, as authorized by the Privacy Act, 5 U.S.C. 552a, subsections (j) and (k), and in accordance with the rule-making procedures of the Administrative Procedures Act, 5 U.S.C. 553, the ODNI hereby proposes rules to:

(1) Exercise its authority pursuant to subsections (j) and (k) of the Privacy Act to exempt certain ODNI systems of records or portions of systems of records from various provisions of the Privacy Act; and

(2) Continue in effect and assert all exemptions claimed under Privacy Act subsections (j) and (k) by an originating agency from which the ODNI obtains records where the purposes underlying the original exemption remain valid and necessary to protect the contents of the record.

(b) *Related policies.* (1) The exemptions asserted apply to records only to the extent they meet the criteria of subsections (j) and (k) of the Privacy Act, whether claimed by the ODNI or the originator of the records.

(2) Discretion to supersede exemption: Where complying with a request for access or amendment would not appear to interfere with or adversely affect a counterterrorism or law enforcement interest, and unless prohibited by law, the D/IMO may exercise his discretion to waive the exemption. Discretionary waiver of an exemption with respect to a record will not obligate the ODNI to waive the exemption with respect to any other record in an exempted system of records. As a condition of such discretionary access, ODNI may impose any restrictions (e.g., concerning the location of file reviews) deemed necessary or advisable to protect the security of agency operations, information, personnel, or facilities.

(3) Records in ODNI systems also are subject to protection under 50 U.S.C. 403–1(i), the provision of the National Security Act of 1947 which requires the DNI to protect intelligence sources and methods from unauthorized disclosure.

§ 1701.21 Exemption of National Counterterrorism Center (NCTC) systems of records.

(a) The ODNI exempts the following systems of records from the requirements of subsections (c)(3); (d)(1),(2),(3) and (4); (e)(1); (e)(4)(G),(H),(I); and (f) of the Privacy Act to the extent that information in the system is subject to exemption pursuant subsections (k)(1) and (k)(5) of the Act:

(1) NCTC Human Resources Management System (ODNI/NCTC–001).

(2) [Reserved]

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an investigative interest on the part of the ODNI or recipient agency and could result in release of properly classified national security or foreign policy information.

(2) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because affording access and amendment rights could alert the record subject to the investigative interest of intelligence or law enforcement agencies or compromise sensitive information classified in the interest of national security. In the absence of a national security basis for exemption, records in this system may be exempted from access and amendment to the extent necessary to honor promises of confidentiality to persons providing information concerning a candidate for position. Inability to maintain such confidentiality would restrict the free flow of information vital to a

determination of a candidate's qualifications and suitability.

(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to establish relevance and necessity before all information is considered and evaluated in relation to an intelligence concern. In the absence of a national security basis for exemption under subsection (k)(1), records in this system may be exempted from the relevance requirement pursuant to subsection (k)(5) because it is not possible to determine in advance what exact information may assist in determining the qualifications and suitability of a candidate for position. Seemingly irrelevant details, when combined with other data, can provide a useful composite for determining whether a candidate should be appointed.

(4) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment, and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(5) From subsection (e)(4)(I) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information, intelligence sources and methods, and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(6) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records, and for assessing fees) because the system is exempt from subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject's access request.

(c) The ODNI exempts the following systems of records from the requirements of subsections (c)(3); (d)(1), (2), (3) and (4); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act to the extent that information in the system is subject to exemption pursuant subsection (k)(1) of the Act:

(1) NCTC Access Authorization Records (ODNI/NCTC–002).

(2) NCTC Telephone Directory (ODNI/NCTC–003).

(3) NCTC Partnership Management Records (ODNI/NCTC–006).

(4) NCTC Tacit Knowledge Management Records (ODNI/NCTC–007)

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an investigative interest on the part of the ODNI or recipient agency and could result in release of properly classified national security or foreign policy information.

(2) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because affording access and amendment rights could alert the record subject to the investigative interest of intelligence or law enforcement agencies or compromise sensitive information classified in the interest of national security.

(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to establish relevance and necessity before all information is considered and evaluated in relation to an intelligence concern.

(4) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(5) From subsection (e)(4)(I) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information, intelligence sources and methods, and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(6) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records, and for assessing fees) because the system is exempt from subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject's access request.

(e) The ODNI exempts the following systems of records from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act, to the extent that information in the system is subject to exemption pursuant to subsections (k)(1) and (k)(2) of the Act:

(1) NCTC Knowledge Repository (SANCTUM) (ODNI/NCTC–004).

(2) NCTC Online (ODNI/NCTC–005).

(3) NCTC Terrorism Analysis Records (ODNI/NCTC–008).

(4) NCTC Terrorist Identities Records (ODNI/NCTC–009).

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an investigative interest on the part of the ODNI as well as the recipient agency and could: result in release of properly classified national security or foreign policy information; compromise ongoing efforts to investigate a known or suspected terrorist; reveal sensitive investigative or surveillance techniques; or identify a confidential source. With this information, the record subject could frustrate counterintelligence measures; impede an investigation by destroying evidence or intimidating potential witnesses; endanger the physical safety of sources, witnesses, and law enforcement and intelligence personnel and their families; or evade apprehension or prosecution by law enforcement personnel.

(2) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because these provisions concern individual access to and amendment of counterterrorism, investigatory and intelligence records. Affording access and amendment rights could alert the record subject to the fact and nature of an investigation or the investigative interest of intelligence or law enforcement agencies; permit the subject to frustrate such investigation, surveillance or potential prosecution; compromise sensitive information classified in the interest of national security; identify a confidential source or disclose information which would reveal a sensitive investigative or intelligence technique; and endanger the health or safety of law enforcement personnel, confidential informants, and witnesses. In addition, affording subjects access and amendment rights would impose an impossible administrative burden to continuously reexamine investigations, analyses, and reports.

(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible for intelligence or law enforcement agencies to know in advance what information about an encounter with a known or suspected terrorist will be relevant for the purpose of conducting an operational response. Relevance and necessity are questions of judgment and timing, and only after information is evaluated can relevance and necessity be established. In addition, information in the system of records may relate to matters under the investigative jurisdiction of another agency, and may not readily be segregated. Furthermore, information in these systems of records, over time, aid in establishing patterns of criminal activity that can provide leads for other law enforcement agencies.

(4) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(5) From subsection (e)(4)(I) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information. Additionally, exemption from this provision is necessary to protect the privacy and safety of witnesses and sources of information, including intelligence sources and methods and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(6) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records and for assessing fees) because the system is exempt from subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject's access request.

§ 1701.22 Exemption of Office of the National Counterintelligence Executive (ONCIX) system of records.

(a) The ODNI exempts the following system of records from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1); (e) (4)(G), (H), (I); and (f) of the Privacy Act, to the extent that information in the system is subject to exemption pursuant to subsections (k)(1) and (k)(2) of the Act:

(1) ONCIX Counterintelligence Damage Assessment Records (ODNI/ONCIX–001).

(2) [Reserved]

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an investigative interest on the part of the ODNI as well as the recipient agency and could: result in release of properly classified national security or foreign policy information; compromise ongoing efforts to investigate a known or suspected terrorist; reveal sensitive investigative or surveillance techniques; or identify a confidential source. With this information, the record subject could frustrate counterintelligence measures; impede an investigation by destroying evidence or intimidating potential witnesses; endanger the physical safety of sources, witnesses, and law enforcement and intelligence personnel and their families; or evade apprehension or prosecution by law enforcement personnel.

(2) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because these provisions concern individual access to and amendment of counterterrorism, investigatory and intelligence records. Affording access and amendment rights could alert the record subject to the fact and nature of an investigation or the investigative interest of intelligence or law enforcement agencies; permit the subject to frustrate such investigation, surveillance or potential prosecution; compromise sensitive information classified in the interest of national security; identify a confidential source or disclose information which would reveal a sensitive investigative or intelligence technique; and endanger the health or safety of law enforcement personnel, confidential informants, and witnesses. In addition, affording subjects access and amendment rights would impose an impossible administrative burden to continuously reexamine investigations, analyses, and reports.

(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to know in advance what information will be relevant to evaluate and mitigate damage to the national security. Relevance and necessity are questions of judgment and timing, and only after information is evaluated can relevance and necessity be established. In addition, information in the system of records may relate to matters under the investigative jurisdiction of another agency, and may not readily be segregated. Furthermore, information in these systems of records, over time, aid in establishing patterns of criminal activity that can provide leads for other law enforcement agencies.

(4) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects to the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(5) From subsection (e)(4)(I) (identifying sources of records in the

system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information. Additionally, exemption from this provision is necessary to protect the privacy and safety of witnesses and sources of information, including intelligence sources and methods and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(6) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records and for assessing fees) because the system is exempt from subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject's access request.

§ 1701.23 Exemption of Office of Inspector General (OIG) systems of records.

(a) The ODNI exempts the following systems of records from the requirements of subsections (c)(3); (d)(1),(2),(3) and (4); (e)(1); (e)(4)(G),(H),(I); and (f) of the Privacy Act to the extent that information in the system is subject to exemption pursuant subsections (k)(1) and (k)(5) of the Act:

(1) OIG Human Resources Records (ODNI/OIG–001).

(2) OIG Experts Contact Records (ODNI/OIG–002).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an investigative interest on the part of the ODNI or recipient agency and could result in release of properly classified national security or foreign policy information.

(2) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because affording access and amendment rights could alert the record subject to the investigative interest of intelligence or law enforcement agencies or compromise sensitive information classified in the interest of national security. In the absence of a national security basis for exemption under subsection (k)(1), records in this system may be exempted from access and amendment pursuant to subsection (k)(5) to the extent necessary to honor promises of confidentiality to persons providing information concerning a candidate for position. Inability to maintain such confidentiality would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to establish relevance and necessity before all information is considered and evaluated in relation to an intelligence concern. In the absence of a national security basis for exemption under subsection (k)(1), records in this system may be exempted from the relevance requirement pursuant to subsection (k)(5) because it is not always possible to determine in advance what exact information may assist in determining the qualifications and suitability of a candidate for position. Seemingly irrelevant details, when combined with other data, can provide a useful composite for determining whether a candidate should be appointed.

(4) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published such a notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(5) From subsection (e)(4)(I)(identifying sources of records in the system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information, intelligence sources and methods and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(6) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records and for assessing fees) because the system is exempt from subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject's access request.

(c) The ODNI exempts the following system of records from the requirements of subsections (c)(3) and (4); (d)(1),(2),(3),(4); (e)(1),(2),(3),(5),(8) and (12); and (g) of the Privacy Act, to the extent that information in the system is subject to exemption pursuant to subsection (j)(2) of the Act. In addition, the following system of records is exempted from the requirements of subsections (c)(3); (d)(1),(2),(3)and (4); (e)(1); (e)(4)(G),(H)and (I); and (f) of the Privacy Act, to the extent that information in the system is subject to exemption pursuant to subsections (k)(1) and (k)(2) of the Act.

(1) OIG Investigation and Interview Records (ODNI/OIG–003).

(2) [Reserved]

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an investigative interest on the part of the ODNI as well as the recipient agency and could: result in release of properly classified national security or foreign policy information; compromise ongoing efforts to investigate a known or suspected terrorist; reveal sensitive investigative or surveillance techniques; or identify a confidential source. With this information, the record subject could frustrate counterintelligence measures; impede an investigation by destroying evidence or intimidating potential witnesses; endanger the physical safety of sources, witnesses, and law enforcement and intelligence personnel and their families; or evade apprehension or prosecution by law enforcement personnel.

(2) From subsection (c)(4) (notice of amendment to record recipients) because the system is exempted from the access and amendment provisions of subsection (d).

(3) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because these

provisions concern individual access to and amendment of counterterrorism, investigatory and intelligence records. Affording access and amendment rights could alert the record subject to the fact and nature of an investigation or the investigative interest of intelligence or law enforcement agencies; permit the subject to frustrate such investigation, surveillance or potential prosecution; compromise sensitive information classified in the interest of national security; identify a confidential source or disclose information which would reveal a sensitive investigative or intelligence technique; and endanger the health or safety of law enforcement personnel, confidential informants, and witnesses. In addition, affording subjects access and amendment rights would impose an impossible administrative burden to continuously reexamine investigations, analyses, and reports.

(4) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to know in advance what information will be relevant for the purpose of conducting an investigation. Relevance and necessity are questions of judgment and timing, and only after information is evaluated can relevance and necessity be established. In addition, information in the system of records may relate to matters under the investigative jurisdiction of another agency, and may not readily be segregated. Furthermore, information in these systems of records, over time, aid in establishing patterns of criminal activity that can provide leads for other law enforcement agencies.

(5) From subsection (e)(2) (collection directly from the individual) because application of this provision would alert the subject of a counterterrorism investigation, study or analysis to that fact, permitting the subject to frustrate or impede the activity. Counterterrorism investigations necessarily rely on information obtained from third parties rather than information furnished by subjects themselves.

(6) From subsection (e)(3) (provide Privacy Act Statement to subjects furnishing information) because the system is exempted from the (e)(2) requirement to collect information directly from the subject.

(7) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(8) From subsection (e)(4)(I) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information. Additionally, exemption from this provision is necessary to protect the privacy and safety of witnesses and sources of information, including intelligence sources and methods and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(9) From subsection (e)(5) (maintain timely, accurate, complete and up-to-date records) because many of the records in the system are derived from other domestic and foreign agency record systems over which ODNI exercises no control. In addition, in collecting information for counterterrorism, intelligence, and law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time and the development of additional facts and circumstances, seemingly irrelevant or dated information may acquire significance. The restrictions imposed by (e)(5) would limit the ability of intelligence analysts to exercise judgment in conducting investigations and impede development of intelligence necessary for effective counterterrorism and law enforcement efforts.

(10) From subsection (e)(8) (notice of compelled disclosures) because requiring individual notice of legally compelled disclosure poses an impossible administrative burden and could alert subjects of counterterrorism, law enforcement, or intelligence investigations to the previously unknown fact of those investigations.

(11) From subsection (e)(12) (public notice of matching activity) because, to the extent such activities are not otherwise excluded from the matching requirements of the Privacy Act, publishing advance notice in the **Federal Register** would frustrate the ability of intelligence analysts to act quickly in furtherance of analytical efforts.

(12) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records and for assessing fees) because the system is exempt from the subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject's access request.

(13) From subsection (g) (civil remedies) to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

Subpart C—Routine Uses Applicable to More Than One ODNI System of Records

§ 1701.30 Policy and applicability.

(a) ODNI proposes the following general routine uses to foster simplicity and economy and to avoid redundancy or error by duplication in multiple ODNI systems of records and in systems of records established hereafter by ODNI or by one of its components.

(b) These general routine uses may apply to every Privacy Act system of records maintained by ODNI and its components, unless specifically stated otherwise in the System of Records Notice for a particular system. Additional general routine uses may be identified as notices of systems of records are published.

(c) Routine uses specific to a particular System of Records are identified in the System of Records Notice for that system.

§ 1701.31 General routine uses.

(a) Except as noted on Standard Forms 85 and 86 and supplemental forms thereto (questionnaires for employment in, respectively, ''non-sensitive'' and ''national security'' positions within the Federal government), a record that on its face or in conjunction with other information indicates or relates to a violation or potential violation of law, whether civil, criminal, administrative or regulatory in nature, and whether arising by general statute, particular program statute, regulation, rule or order issued pursuant thereto, may be disclosed as a routine use to an appropriate federal, state, territorial, tribal, local law enforcement authority, foreign government or international law enforcement authority, or to an appropriate regulatory body

charged with investigating, enforcing, or prosecuting such violations.

(b) A record from a system of records maintained by the ODNI may be disclosed as a routine use, subject to appropriate protections for further disclosure, in the course of presenting information or evidence to a magistrate, special master, administrative law judge, or to the presiding official of an administrative board, panel or other administrative body.

(c) A record from a system of records maintained by the ODNI may be disclosed as a routine use to representatives of the Department of Justice or any other entity responsible for representing the interests of the ODNI in connection with potential or actual civil, criminal, administrative, judicial or legislative proceedings or hearings, for the purpose of representing or providing advice to: the ODNI; any staff of the ODNI in his or her official capacity; any staff of the ODNI in his or her individual capacity where the staff has submitted a request for representation by the United States or for reimbursement of expenses associated with retaining counsel; or the United States or another Federal agency, when the United States or the agency is a party to such proceeding and the record is relevant and necessary to such proceeding.

(d) A record from a system of records maintained by the ODNI may be disclosed as a routine use in a proceeding before a court or adjudicative body when any of the following is a party to litigation or has an interest in such litigation, and the ODNI, Office of General Counsel, determines that use of such records is relevant and necessary to the litigation: the ODNI; any staff of the ODNI in his or her official capacity; any staff of the ODNI in his or her individual capacity where the Department of Justice has agreed to represent the staff or has agreed to provide counsel at government expense; or the United States or another Federal agency, where the ODNI, Office of General Counsel, determines that litigation is likely to affect the ODNI.

(e) A record from a system of records maintained by the ODNI may be disclosed as a routine use to representatives of the Department of Justice and other U.S. Government entities, to the extent necessary to obtain advice on any matter within the official responsibilities of such representatives and the responsibilities of the ODNI.

(f) A record from a system of records maintained by the ODNI may be disclosed as a routine use to a Federal, state or local agency or other appropriate entities or individuals from which/whom information may be sought relevant to: a decision concerning the hiring or retention of an employee or other personnel action; the issuing or retention of a security clearance or special access, contract, grant, license, or other benefit; or the conduct of an authorized investigation or inquiry, to the extent necessary to identify the individual, inform the source of the nature and purpose of the inquiry, and identify the type of information requested.

(g) A record from a system of records maintained by the ODNI may be disclosed as a routine use to any Federal, state, local, tribal or other public authority, or to a legitimate agency of a foreign government or international authority to the extent the record is relevant and necessary to the other entity's decision regarding the hiring or retention of an employee or other personnel action; the issuing or retention of a security clearance or special access, contract, grant, license, or other benefit; or the conduct of an authorized inquiry or investigation.

(h) A record from a system of records maintained by the ODNI may be disclosed as a routine use to a Member of Congress or Congressional staffer in response to an inquiry from that Member of Congress or Congressional staffer made at the written request of the individual who is the subject of the record.

(i) A record from a system of records maintained by the ODNI may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation, as set forth in Office of Management and Budget Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in the Circular.

(j) A record from a system of records maintained by the ODNI may be disclosed as a routine use to any agency, organization, or individual for authorized audit operations, and for meeting related reporting requirements, including disclosure to the National Archives and Records Administration for records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906, or successor provisions.

(k) A record from a system of records maintained by the ODNI may be disclosed as a routine use to individual members or staff of Congressional intelligence oversight committees in connection with the exercise of the committees' oversight and legislative functions.

(l) A record from a system of records maintained by the ODNI may be disclosed as a routine use pursuant to Executive Order to the President's Foreign Intelligence Advisory Board, the President's Intelligence Oversight Board, to any successor organizations, and to any intelligence oversight entity established by the President, when the Office of the General Counsel or the Office of the Inspector General determines that disclosure will assist such entities in performing their oversight functions and that such disclosure is otherwise lawful.

(m) A record from a system of records maintained by the ODNI may be disclosed as a routine use to contractors, grantees, experts, consultants, or others when access to the record is necessary to perform the function or service for which they have been engaged by the ODNI.

(n) A record from a system of records maintained by the ODNI may be disclosed as a routine use to a former staff of the ODNI for the purposes of responding to an official inquiry by a Federal, state, or local government entity or professional licensing authority or facilitating communications with a former staff of the ODNI that may be necessary for personnel-related or other official purposes when the ODNI requires information or consultation assistance, or both, from the former staff regarding a matter within that person's former area of responsibility.

(o) A record from a system of records maintained by the ODNI may be disclosed as a routine use to legitimate foreign, international or multinational security, investigatory, law enforcement or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in, formal agreements and arrangements to include those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

(p) A record from a system of records maintained by the ODNI may be disclosed as a routine use to any Federal agency when documents or other information obtained from that agency are used in compiling the record and the record is relevant to the official responsibilities of that agency, provided that disclosure of the recompiled or enhanced record to the source agency is otherwise authorized and lawful.

(q) A record from a system of records maintained by the ODNI may be disclosed as a routine use to appropriate agencies, entities, and persons when: The security or confidentiality of information in the system of records has or may have been compromised; and the

compromise may result in economic or material harm to individuals (*e.g.*, identity theft or fraud), or harm to the security or integrity of the affected information or information technology systems or programs (whether or not belonging to the ODNI) that rely upon the compromised information; and disclosure is necessary to enable ODNI to address the cause(s) of the compromise and to prevent, minimize, or remedy potential harm resulting from the compromise.

(r) A record from a system of records maintained by the ODNI may be disclosed as a routine use to a Federal, state, local, tribal, territorial, foreign, or multinational agency or entity or to any other appropriate entity or individual for any of the following purposes: to provide notification of a serious terrorist threat for the purpose of guarding against or responding to such threat; to assist in coordination of terrorist threat awareness, assessment, analysis, or response; or to assist the recipient in performing authorized responsibilities relating to terrorism or counterterrorism.

(s) A record from a system of records maintained by the ODNI may be disclosed as a routine use for the purpose of conducting or supporting authorized counterintelligence activities as defined by section 401a(3) of the National Security Act of 1947, as amended, to elements of the Intelligence Community, as defined by section 401a(4) of the National Security Act of 1947, as amended; to the head of any Federal agency or department; to selected counterintelligence officers within the Federal government.

(t) A record from a system of records maintained by the ODNI may be disclosed as a routine use to a Federal, state, local, tribal, territorial, foreign, or multinational government agency or entity, or to other authorized entities or individuals, but only if such disclosure is undertaken in furtherance of responsibilities conferred by, and in a manner consistent with, the National Security Act of 1947, as amended; the Counterintelligence Enhancement Act of 2002, as amended; Executive Order 12333 or any successor order together with its implementing procedures approved by the Attorney General; and other provisions of law, Executive Order or directive relating to national intelligence or otherwise applicable to the ODNI. This routine use is not intended to supplant the other routine uses published by the ODNI.

Dated: December 8, 2007.

Ronald L. Burgess, Jr.,

Lieutenant General, USA, Director of the Intelligence Staff.

[FR Doc. E7–25331 Filed 12–31–07; 8:45 am]

BILLING CODE 3910–A7–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–1074, FRL–8504–7]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District and San Joaquin Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and San Joaquin Valley Air Pollution Control District (SJVAPCD) portions of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing to approve local rules that address circumvention, reduction of animal matter, and volatile organic compound (VOC) emissions from gasoline bulk storage tanks, gasoline filling stations, petroleum refinery equipment, and petroleum solvent dry cleaning.

DATES: Any comments on this proposal must arrive by February 1, 2008.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR–2007–1074, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
- *E-mail: steckel.andrew@epa.gov.*
- *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, Permits Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of MBUAPCD Rules 415, 418, and 1002 and SJVAPCD Rules 4104, 4402, 4404, 4453, 4454, 4625, 4641, and 4672. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: November 16, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E7–25100 Filed 12–31–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 46

RIN 1090–AA95

Implementation of the National Environmental Policy Act (NEPA) of 1969

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of the Interior (Department) proposes to amend its regulations by adding a new part to codify its NEPA procedures currently in the Departmental Manual (DM). This proposed regulation contains Departmental policies and procedures for compliance with NEPA, Executive Order (E.O.) 11514, E.O. 13352 and the Council on Environmental Quality's (CEQ) regulations. By converting the Departmental NEPA procedures from the DM to new regulations that are consistent with NEPA and the CEQ regulations, the Department intends to promote greater transparency in the NEPA process for the public and enhance cooperative conservation.

DATES: Submit comments by March 3, 2008.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the regulation identification number (RIN) 1090–AA95 as an identifier in your message. See also ''Public availability of comments'' under Procedural Requirements below.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: doi_nepa@contentanalysisgroup.com* and use the RIN 1090–AA95 in the subject line.
- *Fax:* 801–397–2601. Identify with RIN 1090–AA95.
- Mail comments to the Department of the Interior, NEPA Proposed Rule, C/O Bear West, 1584 S 500 W Ste 201, Woods Cross, UT 84010. Please reference RIN 1090–AA95 in your comments and also include your name and return address.

FOR FURTHER INFORMATION CONTACT: Dr. Vijai N. Rai, Team Leader, Natural Resources Management; Office of Environmental Policy and Compliance; 1849 C Street, NW., Washington, DC 20240. Telephone: 202–208–6661. *E-mail: vijai_rai@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Background and Need for the Proposed Rule

CEQ regulations at 40 Code of Federal Regulations (CFR) 1507.3 require Federal agencies to adopt procedures as necessary to supplement CEQ's regulations implementing NEPA and to consult with CEQ during their development and prior to publication in the **Federal Register**. The regulation further encourages agencies to publish agency explanatory guidance for CEQ's regulations and agency procedures.

The Department's procedures implementing NEPA as required by CEQ have been contained in chapter 516 of the DM. We revised these procedures and published the revisions in the **Federal Register** on March 8, 2004 (69 FR 10866) and June 6, 2005 (70 FR 32840). We have now decided to publish the procedures as rules to be codified in the CFR.

This proposed regulation supplements the CEQ regulations and must be used in conjunction with those regulations. The bureaus of the Department are required to use this regulation when meeting their responsibilities under NEPA.

This proposed regulation meets the intent of 40 CFR 1507.3 by placing agency-implementing procedures in a regulatory framework. We believe placing agency explanatory guidance (as distinguished from agency implementing procedures) into the DM, Environmental Statement Memoranda (ESM), which are Departmental guidance documents, and bureaus' NEPA handbooks, will facilitate quicker agency responses to new ideas and information, procedural interpretations, training needs, and editorial changes.

Reasons for an Improved Environmental Analysis Process

This proposed regulation is the culmination and natural progression of work begun in 2002 to improve our NEPA compliance process. Since the Department last updated its NEPA procedures, CEQ has issued guidance the Department wishes to incorporate in its regulations. The concepts described below are currently used, but there are no explicit provisions in the current procedures. This proposed regulation provides further guidance on NEPA by: (1) Integrating best practices elements described in the series of ESMs that were issued by the Department in 2003 and finalized in the DM in March 2004; and (2) addressing new NEPA-related policy issues. Specifically, they provide for, among others, greater public and stakeholders' participation in the NEPA process, collaborative NEPA planning, conflict avoidance, and use of adaptive management.

Finally, this proposal will allow for better integration of NEPA procedures and documentation into current Departmental decision-making processes, including collaborative and incremental decision-making.

In 2002, the Department undertook a review of its NEPA practices. This review was done at the practitioner level to obtain best practices in the field. In addition, the Department held four regional listening sessions open to the public, to assist in the identification of best NEPA practices that could be applied across the Department.

Following these public listening sessions, the Department promulgated best practices in two phases: first, through the issuance of five ESMs in 2003 (directives to bureaus on best practices); and second, through finalizing those NEPA best practices in the DM in March 2004. The five NEPA best practices that were first addressed in ESMs were:

ESM 03–3, Procedures for Implementing Tiered and Combined Analyses (http://oepc.doi.gov/ESM/ESM03%2D3%2Epdf)

Bureaus need to determine the sufficiency of existing environmental analyses. If an existing analyses is found to be sufficient, those documents should be cited in the Record of Decision (ROD) without doing additional and possibly duplicate analysis.

ESM 03–4, Procedures for Implementing Public Participation and Community-Based Training (http://oepc.doi.gov/ESM/ESM03%2D4%2Epdf)

Public participation is the involvement, as early as possible, in the NEPA process of persons and organizations having an interest in any Departmental activity, which must meet the requirements of NEPA. Public participation also includes the proactive efforts of Departmental personnel to locate and involve the public.

ESM 03–5, Procedures for Implementing Integrated Analyses in National Environmental Policy Act (NEPA) Process (http://oepc.doi.gov/ESM/ESM03%2D5%2Epdf)

The Department should integrate analyses using a single NEPA process to enable several agencies to satisfy multiple environmental requirements by

conducting concurrent rather than consecutive analyses.

ESM 03–6, Procedures for Implementing Adaptive Management Practices (http://oepc.doi.gov/ESM/ESM03%2D6%2Epdf)

Adaptive management is a system of management practices based on clearly identified outcomes, monitoring to determine if management actions are meeting outcomes, and, if not, facilitating management changes that will best ensure that outcomes are met or to re-evaluate the outcomes. Although not explicitly mentioned in the CEQ regulations, adaptive management can be considered as part of a proposed action. The CEQ determined that the adaptive management provisions in the DM, which are now included in this proposed regulation, are in conformity with NEPA and the CEQ regulations.

ESM 03–7, Procedures for Implementing Consensus-Based Management in Agency Planning and Operations (http://oepc.doi.gov/ESM/ESM03%2D7%2Epdf)

Under this proposed rule, when feasible and practicable, the community alternative should be designated as the bureau's preferred alternative in the NEPA process, so long as a consensus exists within the community for support of that alternative. This designation is also subject to statutory, regulatory, and policy constraints. As a practical consideration, ''consensus'' is ultimately determined by the Responsible Official.

Following the issuance of these ESMs, the Department undertook the process of incorporating these concepts into its DM. This process included a notice and comment period for the public. Following that public comment period, the Department finalized those procedures (516 DM—Proposed Revised Procedures, September 4, 2003, 68 FR 52595; Final, March 8, 2004, 69 FR 10866)

In 2005, the Department, through another public notice and comment process (516 DM 2.5—Proposed, March 18, 2005, 70 FR 13203; Final, June 6, 2005, 70 FR 32840) implemented a policy requiring that eligible Federal, State, Tribal, and local entities be invited to be cooperating agencies to assist in the preparation of any Environmental Impact Statement (EIS). Also in 2005, the Department began a Management Planning and NEPA Modernization Blueprint. This blueprint recommended Departmental functional requirements to be implemented in an automated Interior Land Management Planning System. Throughout this time frame, the Department has continually looked for ways to improve its NEPA compliance. For example, we've worked with the Department of Agriculture, U.S. Forest Service to make our procedures more consistent whenever possible.

At the 2005 White House Conference on Cooperative Conservation (http://cooperativeconservation.gov/conference805home.html), the Department heard many success stories that involved various levels of government working with the public and private sectors to protect and enhance the environment. Many of these examples addressed issues we had dealt with in our previous DM changes. During the Listening Sessions (http://cooperativeconservation.gov/sessions/index.html), held as a follow up to the Conference, we heard many of the same concerns regarding NEPA compliance as we had under our own review and reviews with the Forest Service.

Almost 30 years ago CEQ stated in its preamble to the final NEPA implementing regulations (43 FR 55978, November 29, 1978) that the EIS has ''tended to become an end in itself, rather than a means to making better decisions.'' CEQ noted further: ''One serious problem with the administration of NEPA has been the separation between an agency's NEPA process and its decision-making process. In too many cases bulky EISs have been prepared and transmitted but not used by the decision-maker.'' The innovation at that time was a new requirement for a ROD to show ''how the EIS was used in arriving at the decision.'' At that time, CEQ broadened the focus from emphasis on a single document EIS to ''emphasize the entire NEPA process, from early planning through assessment and EIS preparation through decisions and provisions for follow-up.'' Today, after receiving comments on a draft EIS, agencies prepare a final EIS and document their decision in a ROD, tying the analysis from the EIS to the final agency decision.

Almost 20 years later a CEQ report, ''The National Environmental Policy Act—A Study of Its Effectiveness After Twenty-five Years'' (January 1997; *http://ceq.eh.doe.gov/nepa/nepa25fn.pdf*) stated that ''frequently NEPA takes too long and costs too much, agencies make decisions before hearing from the public, documents are too long and technical for many people to use'' and according to Federal agency NEPA liaisons, ''the EIS process is still frequently viewed as merely a compliance requirement rather than as a tool to effect better decision-making. Because of this, millions of dollars, years of time, and tons of paper have been spent on documents that have little effect on decision-making.'' The report points out that ''some citizens' groups and concerned individuals view the NEPA process as largely a one-way communications track that does not use their input effectively'' and ''when they are invited to a formal scoping meeting to discuss a well-developed project about which they have heard little, they may feel they have been invited too late in the process.'' Finally, the report states ''some citizens complain that their time and effort spent providing good ideas is not reflected in changes to proposals.''

As a part of its continuing efforts to streamline NEPA, CEQ established a NEPA Task Force in 2002 to review current NEPA implementation practices and procedures to determine opportunities to improve and modernize the NEPA process. The Task Force prepared a report in 2003 entitled ''Modernizing NEPA Implementation,'' (*http://ceq.eh.doe.gov/ntf/report/index.html*) where a number of recommendations were made to improve and modernize the NEPA process. CEQ continues to issue guidance based on the Modernizing NEPA Implementation Report. The Department continues to be an active participant in this effort.

A 2005 National Environmental Conflict Resolution Advisory Committee (NECRAC) Report chartered by the U.S. Institute for Environmental Conflict Resolution (*http://www.ecr.gov/necrac/reports.htm*) of the Morris K. Udall Foundation reflected further on the state of the NEPA process 27 years after CEQ published its regulations and recommended furthering the evolution of making procedural requirements under section 102 of NEPA less an end in themselves and more a means to fulfill the policies set out in section 101. The report calls for improvements in the ''traditional model for NEPA implementation'' where ''agencies announce their plans, share their analyses of potential impacts of a range of options, solicit public comment, make decisions, deal with the fallout, if any, and move on to the next project.'' This model results in agency decisions ''based on a collection of views and interests'' but ''generally not a collective decision.'' The report goes on to state that while not a failure, the traditional model for NEPA ''does not take full advantage of the many strengths of section 101.''

The NECRAC recognized that ''Americans expect to be able to work things out and make things better over time. It is not inevitable, and it is clearly

not desirable, that society's ability to constructively address and resolve conflicts should languish or fail to adapt to changing times. The current state of environmental and natural resource decision-making is dominated by the traditional model, which too often fails to capture the breadth and quality of the values and purposes of NEPA.'' The NECRAC called for Federal decision-making that ''enables interested parties'' to ''engage more effectively in the decision-making process'' where ''interested parties are no longer merely commenters on a Federal proposal, but act as partners in defining Federal plans, programs, and projects.''

The 2005 NECRAC Report notes many examples of the Federal government placing an increased emphasis on ''cooperating agencies'' (CEQ Memorandum for Heads of Federal Agencies: Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of NEPA, July 28, 1999, *http://ceq.eh.doe.gov/nepa/regs/ceqcoop.pdf;* and CEQ Memorandum for Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act, January 30, 2002, *http://ceq.eh.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html*), ''cooperative conservation'' (E.O. 13352 on Facilitation of Cooperative Conservation, August 26, 2004), environmental conflict resolution (CEQ & OMB Memorandum on Environmental Conflict Resolution, November 28, 2005, *http://ceq.eh.doe.gov/nepa/regs/OMB_CEQ_Joint_Statement.pdf*), and ''collaboration'' (Background and Other Cooperative Conservation Activities, *http://www.doi.gov/initiatives/conservation2.html*) in agency planning, NEPA analysis, and decision-making.

As the Department integrates the NEPA process into its collaborative and cooperative decision-making process, the Department needs documentation that reflects the way interactive and incremental decision-making occurs. There is a need to ensure that NEPA documents are used in ''arriving at the decision.'' In order to do this, Department NEPA procedures need to reflect a more integrated process. As the NECRAC Report points out, there continues to be focus on preparing NEPA documents such as an EIS or Environmental Assessment (EA) for litigation rather than to facilitate an informed decision process. The proposed NEPA documentation requirements are intended to enable interested parties to engage more effectively in the decision-making process. The agency is proposing new NEPA procedures to allow content and circulation requirements for environmental documents to reflect how agency decisions actually occur, especially with more emphasis on cooperation and collaboration.

This proposed regulation will help the Department's bureaus better document environmental impacts of proposed actions and their alternatives, and facilitate development of an EIS that evolves as the decision evolves and therefore can be used throughout the entire NEPA process. Subsequent detailed statements could document changes to the proposal, its alternative(s), and the environmental effects to reflect the on-going evolution to a final Department decision while keeping the Responsible Official and interested parties informed. The EIS would then be used as a tool to foster collaborative and incremental decision-making processes. The record would reflect a history of how the detailed statement was used in collaboration and incremental decision-making, and the final draft and final EISs would address a more narrowly focused Department action for a final decision. While this proposed regulation does not require a decision to be made collaboratively, it does allow the Department to meet the procedural requirements of section 102 (2) of NEPA while fostering fulfillment of the Act's purpose in section 101.

The proposed NEPA procedures designed to allow for better alignment of an EIS with Department decision-making include: (1) Allowing proposals and alternative(s) to be explored and modified throughout the NEPA process (46.415(b)(2)); and (2) allowing the circulation of multiple preliminary detailed statement(s) without filing requirements (46.415(c)(2)).

The intent is to use environmental information effectively by multiple parties during the NEPA process rather than only at distinct comment periods for a draft and final impact statement. This is to allow interested parties to inform Department decision-making as they regularly exchange and discuss issues; differences; and necessary environmental, social, and economic effects analyses while alternatives are explored, evaluated, and modified throughout the NEPA process. The intent is to focus on a process and the appropriate disclosure outlined in section 102 of NEPA to promote the Act's purposes.

This proposed regulation is intended to implement fully the intent and spirit of the E.O. 13352 on Facilitation of Cooperative Conservation. This E.O. was issued specifically to ensure that Federal agencies implement laws relating to the environment and natural resources in a manner that promotes cooperation amongst interested parties, with emphasis on appropriate inclusion of local participation in Federal decision-making. As a result, the Federal government has placed increasing emphasis on ''cooperating agencies,'' ''cooperative conservation,'' environmental conflict resolution, and ''collaboration'' in agency planning, NEPA analysis, and decision-making.

The ongoing public involvement and collaborative processes encouraged and practiced in the Department and other agencies today can benefit from more expressed flexibility than the agency NEPA procedures currently encourage. Thus, these proposed changes to our NEPA procedures are intended to provide the Department, in cooperation with other Federal, State, and local agencies, Tribes, and other interested parties greater flexibility to meet the intent of NEPA through the procedural provisions of section 102(2) of NEPA. As an example, this proposed regulation allows incremental alternative development through scoping where the agency together with interested and affected members of the public are given the opportunity to develop alternatives.

As a part of the conversion of the Department's NEPA procedures from 516 DM to the CFR, a number of key changes will be made. This proposed regulation:

- Clarifies actions subject to NEPA section 102(2) by locating all relevant CEQ guidance in one place.
- Amends current direction so that immediate emergency responses do not require documentation under the CEQ regulations or NEPA section 102(2). The Responsible Official must assess and minimize potential environmental damage to the extent consistent with protecting life, property, and important resources.
- Incorporates CEQ guidance language that states that a past action must be ''relevant'' in illuminating or predicting direct and indirect effects of a proposed action when conducting cumulative effects analysis.
- Clarifies that alternatives, including the proposed action, may be modified through an incremental process if modifications are analyzed and documented.
- Clarifies that the agency has discretion to determine, on a case-by-case basis, how to involve the public in the preparation of EAs and whether an EA will be published in draft for public comment.
- Clarifies that adaptive management strategies may be incorporated into

alternatives, including the proposed action.

• Incorporates language from the statute and CEQ guidance that states EAs need only analyze the proposed action if there are no unresolved conflicts concerning alternative uses of available resources.

This proposed regulation is organized under subparts A through E, covering the material in 516 DM Chapters 1 through 6. The Department did not include 516 DM Chapter 7 in this proposed regulation because it provides guidance on review of environmental documents and project proposals prepared by other Federal agencies. Bureau-specific NEPA implementing procedures in 516 DM Chapters 8–15 continue to be available for their respective use.

This proposed regulation does not include sections in the DM that generally provide guidance to bureaus. This guidance will be addressed separately in bureaus' NEPA handbooks or in other Departmental documents such as 516 DM and ESMs.

The following paragraphs contain a section-by-section analysis of key proposed changes under each subpart from those currently in the 516 DM procedures. The Department has highlighted key changes, including new sections, under each subpart so that commenters can focus on the specific changes proposed by the Department in this proposed regulation.

Section-by-Section Analysis of Proposed Changes

Subpart A: General Information

Section 46.30 Definitions. This section supplements the terms found in the CEQ regulations and adds several new definitions. The terms affected are the following: Adaptive management; Bureau; Community-based training; Controversial; Environmental Statement Memoranda; Environmentally preferable alternative; Preliminary EIS; Reasonably foreseeable future action; and Responsible Official.

Subpart B: Protection and Enhancement of Environmental Quality

We removed portions of 516 DM Chapter 1 that address purely Departmental processes. This information will be retained in the DM or will be issued as additional guidance by the Office of Environmental Policy and Compliance. This subpart includes the following sections:

Section 46.100 Federal action subject to the procedural requirements of NEPA. This section provides clarification on when a proposed action is subject to the procedural requirements of NEPA.

Section 46.105 Using a contractor to prepare environmental documents. This section explains how bureaus may use a contractor to prepare any environmental document in accordance with the standards of 40 CFR 1506.5.

Section 46.110 Using consensus-based management. This section incorporates consensus-based management as part of the NEPA planning process.

Section 46.113 Scope of the analysis. This section addresses the relationships between connected, cumulative, and similar actions and direct, indirect and cumulative impacts.

Section 46.115 Consideration of past actions in the cumulative effects analysis. This section incorporates CEQ guidance issued on June 24, 2005, that clarifies how past actions should be considered in a cumulative effects analysis.

Section 46.120 Using existing environmental analyses. This section explains how to incorporate existing environmental analysis into the analysis being prepared.

Section 46.125 Incomplete or unavailable information. This section clarifies that the overall costs of obtaining information referred to in 40 CFR 1502.22 are not limited to the estimated cost of obtaining information unavailable at the time of the EIS, but can include other costs such as social costs that are more difficult to monetize. Specifically the Department requests comments on whether to provide guidance on how to incorporate non-monetized social costs into its determination of whether the costs of incomplete or unavailable information are exorbitant. The Department also requests comments on what non-monetized social costs might be appropriate to include in this determination; e.g., social-economic and environmental (including biological) costs of delay in fire risk assessments for high risk fire-prone areas.

Section 46.130 Mitigation measures in analyses. This section clarifies how mitigation measures and environmental best management practices are to be incorporated into and analyzed as part of the proposed action and its alternatives.

Section 46.135 Using incorporation by reference. This section establishes regulations for incorporating by reference.

Section 46.140 Using tiered documents. This section clarifies the use of tiering. The Department is considering developing more specific provisions as to the use of tiering, and invites public comment on this issue. For instance, an EA prepared in support of an individual action can be tiered to a programmatic or other broader EIS. The Department is considering under what conditions a FONSI may be reached for the individual action on the basis of such a tiered EA, if significant effects noted in that EA have already been disclosed and analyzed in the EIS to which the EA is tiered. The FONSI, in such circumstances would be, in effect, a finding of no significant impact other than those already disclosed and analyzed in the EIS to which the EA is tiered.

Section 46.145 Using adaptive management. This section incorporates adaptive management as part of the NEPA planning process.

Section 46.150 Emergency responses. This section clarifies that Responsible Officials can take immediate actions in response to the immediate effects of emergencies necessary to mitigate harm to life, property, or important resources without complying with the procedural requirements of NEPA, the CEQ regulations, or this proposed regulation. Furthermore, Responsible Officials can take urgent actions to respond to the immediate effects of an emergency when there is not sufficient time to comply with the procedural requirements of NEPA, the CEQ regulations, or this proposed regulation by consulting with the Department (and CEQ in cases where the response action is expected to have significant environmental impacts) about alternative arrangements.

Section 46.155 Consultation, coordination, and cooperation with other agencies and organizations. This section describes the use of procedures to consult, coordinate, and cooperate with relevant State, local, and tribal governments, other bureaus, and Federal agencies concerning the environmental effects of Department plans, programs, and activities.

Section 46.160 Limitations on actions during the NEPA analysis process. This section incorporates guidance to aid in fulfilling the requirements of 40 CFR 1506.1.

Section 46.165 Ensuring public involvement. This section incorporates public information and involvement requirements for Departmental proposed actions that have potential environmental impacts.

Section 46.170 Environmental effects abroad of major Federal actions. This section describes procedures the bureaus must follow in implementing E.O. 12114, which addresses the United States government's exclusive and

complete determination of the procedural and other proposed actions to be taken by Federal agencies to further the purpose of NEPA, with respect to the environment outside the United States, its territories, and possessions.

Subpart C: Initiating the NEPA Process

In the conversion from 516 DM 2 to 43 CFR Part 46, Subpart C, we have restructured the Department's requirements for initiating the NEPA process. We have put into regulation the essential parts of the NEPA process that are unique to the Department and which require further clarification of the CEQ regulations. This proposed regulation clarifies the requirements for applying NEPA early, using categorical exclusions (CXs), designating lead agencies, determining eligible cooperating agencies, implementing the Department's scoping process, and adhering to time limits for the NEPA process.

Section 46.200 Applying NEPA early. This section emphasizes early consultation and coordination with Federal, State, local, and Tribal entities and with interested private parties whenever practical and feasible.

Section 46.205 Actions categorically excluded from further NEPA review. This section provides Department-specific guidance on the use of CXs.

Section 46.210 Listing of Departmental CXs. This section includes a listing of the Department's CXs (currently 516 DM Chapter 2, Appendix B–1). This section includes the same number of CXs as were in the DM and the wording in the CXs is essentially unchanged. These CXs were each published for public comment prior to inclusion in the DM. There is one change in § 46.210(i), which replaces 516 DM Chapter 2, Appendix B–1, Number 1.10, correcting a typographical error. The phase '' * * * technical or procedural nature; or * * *'' from 516 DM as it existed in 1984 was inadvertently changed in 2004 in 516 DM to read '' * * * technical or procedural nature; and * * *''. We have corrected this error because there are certain circumstances where NEPA does not apply. For example, guidance to applicants for transferring funds electronically to the Federal Government is an action not subject to NEPA. The CXs are in paragraphs (a) through (l).

Section 46.215 CXs: Extraordinary circumstances. This section contains a listing of the Department's CXs: Extraordinary Circumstances (currently 516 DM Chapter 2, Appendix B–2). This section includes the same number of CXs: Extraordinary Circumstances as were in the DM and the wording in the CXs: Extraordinary Circumstances is essentially unchanged. Similarly to the listing of CXs, each of the Extraordinary Circumstances was published for public comment prior to inclusion in the DM. The CXs: Extraordinary Circumstances are in paragraphs (a) through (l).

Section 46.220 How to designate lead agencies. This section provides specific detail regarding the selection of lead agencies.

Section 46.225 How to select cooperating agencies. This section establishes procedures for selecting cooperating agencies and determining the roles of non-Federal agencies, such as tribal governments, and the further identification of eligible governmental entities for cooperating agency relationships. Criteria for identifying, and procedures for defining, the roles of cooperating agencies and the specific requirements to be carried out by cooperators in the NEPA process are set forth in this section.

Section 46.230 Role of cooperating agencies in the NEPA process. This section provides specific detail regarding the responsibilities of cooperating agencies.

Section 46.235 NEPA scoping process. This section discusses the use of NEPA's scoping requirements to engage the public in collaboration and consultation for the purpose of identifying concerns, potential impacts, possible alternatives, and interdisciplinary considerations. The regulatory language encourages the use of communication methods for a more efficient and proactive approach to scoping.

Section 46.240 Establishing time limits for the NEPA process. The section requires bureaus to establish time limits to make the NEPA process more efficient.

Subpart D: Environmental Assessments

In the conversion from 516 DM Chapter 3 to 43 Part 46 Subpart D, we have written this proposed regulation to incorporate procedural changes, expand upon existing procedures, give greater discretion and responsibilities to bureaus, and provide clarity in the EA process.

Section 46.300 Purpose of an EA and when it must be prepared. This section clarifies that the action being analyzed is a ''proposed'' action. It expands upon the purpose and clarifies when to prepare an EA.

Section 46.305 Public involvement in the EA process. This section incorporates procedural changes and differentiates the requirements for public involvement in the EA and EIS processes. This section requires bureaus to provide notice when they are proposing to undertake an action but gives bureaus discretion to determine the format for providing opportunities for public involvement. It has been expanded to give bureaus the discretion to provide cooperating agency status for EAs. It specifies that the publication of a draft EA for public comment is not always required.

Section 46.310 Contents of an EA. This section establishes new language outlining what information must be included in an EA. It describes the requirements for alternatives, if any, and provides for incorporating adaptive management strategies in alternatives. Sections on tiered analysis, from 516 DM Chapter 3, are found in subpart B of this proposed regulation since this information pertains to both EISs and EAs.

Section 46.315 How to format an EA. This section provides clarification on the EA format.

Section 46.320 Adopting EAs prepared by another agency, entity, or person. In this section, the term ''and other program requirements'' has been added to the compliance stipulations. It also expands the requirements of the Responsible Official in adopting an EA.

Section 46.325 Conclusion of the EA process. This section has been added to outline the possible conclusions of the EA process and to clarify the responsibilities of bureaus in the documentation of such conclusions.

Subpart E: Environmental Impact Statements

The language from 516 DM Chapter 4 that simply reiterates the CEQ regulations is not included in subpart E of this proposed regulation. These DM sections are: statutory requirements, cover sheet, summary, purpose and need, appendix, methodology and scientific accuracy, proposals for legislation, and time periods. Sections on tiering, incorporation by reference, incomplete or unavailable information, adaptive management, and contractor prepared environmental documents, from 516 DM Chapter 4 are found in subpart B of this proposed regulation since this information pertains to EISs and EAs. The term ''environmentally preferred alternative'' is found in the definitions, subpart A. This phrase expands on the definition as currently exists in 516 DM 4.10(A)(5). This proposed regulation incorporates procedural changes, clarifies the extent of discretion and responsibility that may be exercised by bureaus and provides clarity in the EIS process.

Section 46.400 Timing of EIS development. This section provides specific detail regarding when an EIS must be prepared. The Department is considering developing more specific provisions as to the timing of EIS preparation, and invites public comment on this issue. For example, courts have stated that NEPA requires an agency to complete its evaluation of the environmental effects before making its decision, which is prior to the point of commitment to any action which results in an irreversible and irretrievable commitment of resources. Specifically, we are seeking comments with respect to whether guidance should be developed to assist the Responsible Official toward identifying the point prior to the decision. We are also soliciting comments on whether it would be helpful to include in paragraph (a) examples of a major Federal action significantly affecting the quality of the human environment.

Section 46.405 Remaining within page limits. This section encourages bureaus to keep EISs within the page limits described in the CEQ regulations using incorporation by reference and tiering.

Section 46.415 EIS format. This section establishes an alternative EIS format. This section also provides direction for the development of alternatives, establishes language on the documentation of environmental effects with a focus on NEPA statutory requirements, and provides direction for circulating and filing the draft and final EIS.

Section 46.420 Terms used in an EIS. This section describes terms that are commonly used to describe concepts or activities in an EIS, including: (a) Statement of purpose and need, (b) Reasonable alternatives, (c) Range of alternatives, (d) Proposed action, (e) Preferred alternative, and (f) No action alternative.

Section 46.425 Identification of the preferred alternative in an EIS. This section clarifies when the preferred alternative must be identified.

Section 46.430 Environmental review and consultation requirements. This section establishes procedures for an EIS that also addresses other environmental review requirements and approvals. It should be noted that this section allows for the completion of the NEPA analysis prior to obtaining all permits. However, if the terms of the permit are outside of the scope analyzed, additional NEPA analysis will be required.

Section 46.435 Inviting comments. This section requires bureaus to request comments from Federal, State, and local agencies, or tribal governments, and the public at large. This section also clarifies that bureaus do not have to delay a final EIS because they have not received comments.

Section 46.440 Eliminating duplication with State and local procedures. This section allows a State agency to jointly prepare an EIS, if applicable.

Section 46.445 Preparing a legislative EIS. This section ensures that a legislative EIS is included as a part of the formal transmittal of a legislative proposal to the Congress.

Section 46.450 Identifying the environmentally preferable alternative. This section provides for identifying the environmentally preferable alternative in the ROD.

Procedural Requirements

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this rule:

(1) Is not an economically significant action because it will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor state or local governments.

(2) Will not interfere with an action taken or planned by another agency.

(3) Will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

(4) Is a significant rulemaking action subject to OMB review because of the extensive interest in Department planning and decision making relating to NEPA.

In accordance with the Office of Management and Budget (OMB) Circular A–4, ''Regulatory Analysis,'' the Department has conducted a cost/benefit analysis. The analysis compared the costs and benefits associated with the current condition of having Departmental implementing procedures combined with Departmental explanatory guidance in the DM and the proposed condition of having implementing direction in regulation and explanatory guidance in the DM.

Many benefits and costs associated with the proposed rule are not quantifiable. Some of the benefits of this rule include collaborative and participatory public involvement to more fully address public concerns, timely and focused environmental analysis, flexibility in preparation of environmental documents, and improved legal standing. These will be positive effects of the new rule.

Moving NEPA procedures from the DM to the CFR is expected to provide a variety of potential beneficial effects. This rule would meet the requirements of 40 CFR 1507.3 by placing Department's implementing procedures in their proper regulatory position. Maintaining Departmental explanatory guidance in directives would facilitate timely agency responses to new ideas and information, procedural interpretations, training needs, and editorial changes to addresses and internet links to assist bureaus when implementing the NEPA process. Finally, the proposed changes to the Department NEPA procedures are intended to provide the Department specific options to meet the intent of NEPA through collaboration, the establishment of incremental alternative development, and the use of adaptive management principles.

Thus, while no single effect of this proposed rule creates a significant quantifiable improvement, the benefits outlined above taken together create the potential for visible improvements in the Department's NEPA program. Further discussion of the cost-benefits associated with the proposed regulation is contained in the economic analysis which is incorporated in the administrative record for this proposed rulemaking and may be accessed on the Department's Office of Environmental Policy and Compliance Web site located at: *http://www.doi.gov/oepc.*

Regulatory Flexibility Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document provides the Department with policy and procedures under NEPA and does not compel any other party to conduct any action.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

a. Does not have an annual effect on the economy of $100 million or more. As explained above, this rule will not have an annual effect on the economy of $100 million or more and is expected to have no significant economic impacts.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, Tribal, or local government agencies; or geographic regions. Compliance with NEPA and supplementing the CEQ regulations will not affect costs or prices.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Compliance with NEPA and supplementing CEQ regulations in this rule should have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign based enterprises.

Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule does not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Takings (E.O. 12630)

This proposed rule has been analyzed in accordance with the principles and criteria contained in E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the proposed rule does not pose the risk of a taking of Constitutionally protected private property.

Federalism (E.O. 13132)

The Department has considered this proposed rule under the requirements of E.O. 13132, Federalism. The Department has concluded that the proposed rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Does not unduly burden the judicial system;

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity, and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

In accordance with E.O. 13175 of November 6, 2000, and 512 DM 2, we have assessed this document's impact on Tribal trust resources and have determined that it does not directly affect Tribal resources since it describes the Department's procedures for its compliance with NEPA.

Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

The CEQ does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. III. 1999), *aff'd* 230 F.3d 947. 954–55 (7th Cir. 2000).

Data Quality Act

In developing this rule we did not conduct or use a study requiring peer review under the Data Quality Act (Pub. L. 106–554).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of This Proposed Regulation

We are required by E.O.s 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

—Be logically organized;
—Use the active voice to address readers directly;
—Use clear language rather than jargon;
—Be divided into short sections and sentences; and
—Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments as instructed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you think lists or tables would be useful, etc.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 43 CFR Part 46

Environmental protection, EISs.

James E. Cason,

Associate Deputy Secretary.

For the reasons given in the preamble, the Office of the Secretary proposes to add a new part 46 to Subtitle A of title 43 of the Code of Federal Regulations to read as follows:

PART 46—IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Sec.

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Authority: 42 U.S.C. 4321, *et seq.* (The National Environmental Policy Act of 1969, as amended); Executive Order 11514, (Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977)); 40 CFR parts 1500–1508 (43 FR 55978) (National Environmental Policy Act, Implementation of Procedural Provisions).

Subpart A—General Information

§ 46.10 Purpose of this part.

This part establishes procedures for the Department, and its constituent bureaus, to use for compliance with:

(a) The National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*); and

(b) The Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508).

§ 46.20 How to use this part.

(a) This part supplements, and is to be used in conjunction with, the CEQ regulations except where it is inconsistent with other statutory requirements. The following table shows the corresponding CEQ regulations for the sections in subparts A–E of this part. Some sections in those subparts do not have a corresponding CEQ regulation.

	40 CFR
Subpart A:	
46.10	Parts 1500–1508.
46.20	No corresponding CEQ regulation.
46.30	No corresponding CEQ regulation.
Subpart B:	
46.100	1508.14, 1508.18, 1508.23
46.105	1506.5
46.110	No corresponding CEQ regulation.
46.113	1508.25
46.115	1508.7
46.120	1502.9, 1502.20, 1502.21, 1506.3
46.125	1502.22
46.130	1502.14
46.135	1502.21
46.140	1502.20
46.145	No corresponding CEQ regulation.
46.150	1506.11
46.155	1502.25, 1506.2
46.160	1506.1
46.165	1506.6
46.170	No corresponding CEQ regulation.
Subpart C:	
46.200	1501.2
46.205	1508.4
46.210	1508.4
46.215	1508.4
46.220	1501.5
46.225	1501.6
46.230	1501.6
46.235	1501.7
46.240	1501.8
Subpart D:	
46.300	1501.3
46.305	1501.7, 1506.6
46.310	1508.9
46.315	No corresponding CEQ regulation.
46.320	1506.3
46.325	1505.1
Subpart E:	
46.400	1502.5
46.405	1502.7
46.415	1502.10
46.420	1502.14
46.425	1502.14
46.430	1502.25
46.435	1503.1
46.440	1506.2
46.445	1506.8
46.450	1505.2

(b) The Responsible Official shall coordinate the appropriate NEPA review with the decisionmaking process for proposals subject to this part.

(c) During the decisionmaking process for each proposal subject to this part, the Responsible Official shall consider the relevant NEPA documents, public and agency comments (if any) on those documents, and responses to those comments, as part of consideration of the proposal and with the exception of § 46.210(a) through (j), shall include such documents, including supplements, comments, and responses as part of the administrative record.

(d) The Responsible Official's decision on a proposed action shall be within the range of alternatives discussed in the relevant environmental document.

(e) For situations involving an applicant, the Responsible Official should initiate the NEPA process upon acceptance of an application for a proposed Federal action. The Responsible Official shall make policies or staff available to advise potential applicants of studies or other information foreseeably required for later Federal action.

§ 46.30 Definitions.

For purposes of this part, the following definitions supplement terms defined at 40 CFR parts 1500–1508.

Adaptive management is a system of management practices based on clearly identified outcomes and monitoring to determine if management actions are meeting desired outcomes; and, if not, facilitating management changes that will best ensure that outcomes are met or re-evaluated. Adaptive management recognizes that knowledge about natural resource systems is sometimes uncertain.

Bureau means bureau, office, service, or survey.

Community-based training in the NEPA context is the training of local participants together with Federal participants in the intricacies of the environmental planning effort as it relates to the local community(ies).

Controversial refers to cases where a substantial dispute exists as to the size, nature, or effect of the proposed action rather than to the existence of opposition to a proposed action, the effect of which is relatively undisputed.

Environmental Statement Memoranda (ESM) are a series of instructions to provide information and guidance in the preparation, completion, and circulation of NEPA documents.

Environmentally preferable alternative is the alternative required by 40 CFR 1505.2(b) to be identified in a ROD, that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and

natural resources. The Responsible Official must consider and weigh long-term environmental impacts against short-term impacts in evaluating what is the best protection of these resources. In some situations, there may be more than one environmentally preferable alternative.

Preliminary environmental impact statement is an interim environmental document that a Responsible Official may use to initiate discussion, solicit comments, and inform interested parties and agency personnel while proposals, alternatives, and environmental effects are explored and considered prior to filing a draft or final EIS. A preliminary EIS is an option available for Responsible Official to use and is not required.

Reasonably foreseeable future actions include those activities not yet undertaken, for which there are existing decisions, funding, or proposals identified by the agency.

Responsible Official is the bureau employee who exercises the authority to make and implement a decision on a proposed action.

Subpart B—Protection and Enhancement of Environmental Quality

§ 46.100 Federal action subject to the procedural requirements of NEPA.

(a) The determination of whether a proposed action is subject to the procedural requirements of NEPA depends on the extent to which bureaus exercise control and responsibility over the proposed action and whether Federal funding or approval will be provided to implement it. If Federal funding is provided in the form of general revenue sharing funds with no Federal agency control as to the expenditure of such funds by the recipient, NEPA compliance is not necessary.

(b) A bureau proposal is a Federal action and subject to the procedural requirements of NEPA when it meets all of the following criteria:

(1) The bureau has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal;

(2) The proposed action is subject to bureau control and responsibility (40 CFR 1508.18);

(3) The proposed action would cause effects on the human environment (40 CFR 1508.14) that can be meaningfully evaluated (40 CFR 1508.23); and

(4) The proposed action is not statutorily exempt from the requirements of section 102(2) of NEPA.

§ 46.105 Using a contractor to prepare environmental documents.

A bureau may use a contractor to prepare any environmental document in accordance with the standards of 40 CFR 1506.5(b) and (c). If a bureau uses a contractor, the bureau remains responsible for:

(a) Preparation and adequacy of the environmental documents; and

(b) Independent evaluation of the environmental documents after their completion.

§ 46.110 Using consensus-based management.

(a) For the purposes of this Part, consensus-based management is the inclusion of interested parties with an assurance for the participants that the results of their work will be given consideration by the Responsible Official in selecting a course of action.

(b) In practicing consensus-based management, bureaus should give full consideration to any reasonable alternative(s) put forth by participating interested parties. While there can be no guarantee that a community's proposed alternative will be taken as the agency proposed action, bureaus must be able to show that a community's work is reflected in the evaluation of the proposed action and the final decision. To be considered, the community's alternative must be fully consistent with NEPA, the CEQ Regulations, and all applicable Departmental and bureau written policies and guidance.

§ 46.113 Scope of the analysis.

To determine the scope of the NEPA analysis and documentation for a proposed action, bureaus shall consider whether, to what extent, and how they will analyze connected, cumulative, and similar actions. The NEPA document should contain discussions of the effects of connected and cumulative actions, and may contain discussions of the effects of similar actions. For example, when the proposed Federal action determines the location or design of a non-Federal connected action, the effects of that connected action should be included in the discussion of the indirect impacts of the proposed Federal action. The effects of non-Federal and Federal cumulative actions and actions with cumulative effects on the same resource values affected by the proposed Federal action should be included in the discussion of the cumulative impacts of the proposed Federal action. A non-Federal connected action that impacts the same resource values affected by the proposed Federal action should be included in the discussion of the indirect and cumulative impacts of the proposed Federal action.

§ 46.115 Consideration of past actions in the cumulative effects analysis.

When considering the effects of past actions as part of a cumulative effects analysis, the Responsible Official must analyze the effects in accordance with guidance established by CEQ:

(a) The analysis of cumulative effects begins with consideration of the direct and indirect effects on the environment that are expected or likely to result from the alternative proposals for bureau action. Bureaus then look for present effects of past actions that are, in the judgment of the bureau, relevant and useful because they have a significant cause-and-effect relationship with the direct and indirect effects of the proposal for bureau action and its alternatives. CEQ regulations do not require the consideration of the individual effects of all past actions to determine the present effects of past actions. Once the bureau has identified those present effects of past actions that warrant consideration, the bureau assesses the extent that the effects of the proposal for bureau action or its alternatives will add to, modify, or mitigate those effects. The final analysis documents a bureau assessment of the cumulative effects of the actions considered (including past, present, and reasonably foreseeable future actions) on the affected environment.

(b) With respect to past actions, during the scoping process and subsequent preparation of the analysis, the bureau must determine what information regarding past actions is useful and relevant to the required analysis of cumulative effects. Cataloging past actions and specific information about the direct and indirect effects of their design and implementation could in some contexts be useful to predict the cumulative effects of the proposal. The CEQ regulations, however, do not require bureaus to catalogue or exhaustively list and analyze all individual past actions. Simply because information about past actions may be available or obtained with reasonable effort does not mean that it is relevant and necessary to inform decisionmaking.

§ 46.120 Using existing environmental analyses.

(a) The Responsible Official should use existing analyses for assessing the impacts of a proposed action and any alternatives as allowed by this section.

(b) If existing analyses include data and assumptions appropriate for the analysis at hand, the Responsible

Official should use the existing analyses where feasible.

(c) An existing environmental analysis may be used if the Responsible Official determines, with appropriate supporting documentation, that it adequately assesses the environmental effects of the proposed action and reasonable alternatives. The supporting record must include an evaluation of whether new circumstances, new information, changes in the action or its impacts not previously analyzed, warrant new analysis.

(d) Bureaus should make the best use of existing NEPA documents and avoid redundancy and unneeded paperwork through supplementing, incorporating by reference, or adopting previous environmental analyses.

§ 46.125 Incomplete or unavailable information.

In 40 CFR 1502.22, the over-all costs of obtaining information being exorbitant refers not only to monetary costs, but can include other non-monetized social costs when appropriate.

§ 46.130 Mitigation measures in analyses.

The analysis of the proposed action and any alternatives must include an analysis of the effects of the proposed action or alternative without additional mitigation as well as analysis of the effects of any other appropriate mitigation measures or best management practices that are considered for addition to the proposed action or alternatives. The additional mitigation measures can be analyzed either as elements of alternatives or in a separate discussion of mitigation.

§ 46.135 Using incorporation by reference.

(a) The Responsible Official must determine that the analysis and assumptions used in the reference document are appropriate for the analysis at hand.

(b) Citations of specific information or analysis from other source documents must include the pertinent page numbers.

(c) All literature references must be listed in the bibliography. Literature references that are incorporated by reference shall be readily available for review; literature references that are not readily available shall be made available for review as part of the administrative record supporting the proposed action.

§ 46.140 Using tiered documents.

A NEPA document that tiers to a broader NEPA document in accordance with 40 CFR 1508.28 must include a finding that the conditions and environmental effects described in the broader NEPA document are still valid.

(a) Where the impacts of the narrower action are identified and analyzed in the broader NEPA document, no further analysis is necessary.

(b) To the extent that any relevant analysis in the broader NEPA document is out-of-date or otherwise inadequate, the tiered NEPA document must explain this and provide any necessary analysis.

(c) Bureaus will review their existing guidance concerning the use of tiering, and ascertain whether additional guidance is needed. Guidance must include, but is not limited to, guidance on finding and using similar information, examples of tiered analyses, a set of procedural steps to make the most of tiered analyses, knowledge of when to use previous material, and how to use tiered analyses without sacrificing references to original sources.

§ 46.145 Using adaptive management.

Bureaus should use adaptive management as part of their decision making processes, as appropriate, particularly in circumstances where long-term impacts may be uncertain and future monitoring will be needed to make necessary adjustments in subsequent implementation decisions. The NEPA analysis conducted in support of a bureau's decision to adopt an adaptive management approach should identify the range of management options that may be taken in response to the results of monitoring, and should analyze the effects of such options. The environmental effects of any adaptive management strategy must be evaluated in this or subsequent NEPA analysis.

§ 46.150 Emergency responses.

(a) If the Responsible Official determines that an emergency exists that makes it necessary to take emergency actions before completing a NEPA analysis and documentation in accordance with the provisions in subparts D and E of this part, then these provisions apply.

(b) The Responsible Official may take emergency actions necessary to control the immediate impacts of the emergency to mitigate harm to life, property, or important resources. When taking such actions, the Responsible Official shall take into account the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practical.

(c) If the Responsible Official determines that proposed emergency actions, beyond actions noted in paragraph (b) of this section, are not likely to have significant environmental impacts, the Responsible Official shall document that determination in an EA and finding of no significant impact (FONSI) prepared in accordance with this regulation, unless categorically excluded (subpart C of this part). If the Responsible Official finds that the nature and scope of the subsequent actions related to the emergency require taking such proposed actions prior to completing an EA and FONSI, the Responsible Official shall consult with the Department about alternative arrangements for NEPA compliance. Consultation with the Department must be coordinated through the appropriate bureau's office.

(d) If the Responsible Official determines that proposed emergency actions, beyond actions noted in paragraph (b) of this section, are likely to have significant environmental impacts, then the Responsible Official shall consult with CEQ, through the appropriate bureau office and the Department, about alternative arrangements as soon as possible. Alternative arrangements address the proposed actions necessary to control the immediate impacts of the emergency. Other proposed actions remain subject to NEPA analysis and documentation in accordance with this regulation.

§ 46.155 Consultation, coordination, and cooperation with other agencies and organizations.

(a) The Responsible Official must whenever possible:

(1) Consult, coordinate, and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies concerning the environmental effects of bureau plans, programs, and activities within the jurisdictions or related to the interests of these outside entities; and

(2) Include consensus-based management (see § 46.110) and, when doing so, comply with the applicable provisions of the Federal Advisory Committee Act (FACA).

(b) Bureaus must develop procedures to implement this section.

§ 46.160 Limitations on actions during the NEPA analysis process.

During the preparation of a program or plan NEPA document, the Responsible Official may undertake any major Federal action within the scope of, and analyzed in the existing NEPA document supporting the current plan or program, so long as there is adequate NEPA documentation to support the individual action.

§ 46.165 Ensuring public involvement.

Bureaus should develop and implement procedures in accordance with this part to ensure:

(a) The fullest practical provision of timely public information about bureau proposed actions that have environmental impacts, including information on the environmental impacts of alternative courses of action; and

(b) Appropriate public involvement in the development of NEPA analyses and documents.

§ 46.170 Environmental effects abroad of major Federal actions.

(a) In order to facilitate informed and responsible decision-making, the Responsible Official having ultimate responsibility for authorizing and approving proposed actions encompassed by the provisions of Executive Order (E.O.) 12114 shall follow the provisions and procedures of that E.O. E.O. 12114 represents the United States government's exclusive and complete determination of the procedural and other proposed actions to be taken by Federal agencies to further the purpose of NEPA, with respect to the environment outside the United States, its territories, and possessions.

(b) When implementing E.O. 12114, bureaus shall coordinate with the Department. The Department shall then consult with the Department of State, which shall coordinate all communications by the Department with foreign governments concerning environmental agreements and other arrangements in implementing E.O. 12114.

Subpart C—Initiating the NEPA Process

§ 46.200 Applying NEPA early.

(a) For any proposed Federal action (40 CFR 1508.23 and 1508.18) that may have environmental impacts, bureaus must coordinate, as early as feasible, with:

(1) Any other bureaus or Federal agencies, State, local, and tribal governments having jurisdiction by law or special expertise; and

(2) Appropriate Federal, State, local, and tribal governments authorized to develop and enforce environmental standards or to manage and protect natural resources or other aspects of the human environment.

(b) Bureaus must solicit the participation of all interested parties and organizations as early as possible, such as at the time an application is received, or when the bureau initiates the NEPA process for a proposed action.

(c) Bureaus should provide, where practicable, any appropriate community-based training to reduce costs, prevent delays, and facilitate and promote efficiency in the NEPA process.

(d) Bureaus should inform private or non-Federal applicants, to the extent feasible, of:

(1) Any appropriate environmental information that the applicants must include in their applications; and

(2) Any consultation with other Federal agencies, or State, local, or tribal governments that the applicant must accomplish before or during the application process.

§ 46.205 Actions categorically excluded from further NEPA review.

CXs are a group of actions that have no significant individual or cumulative effect on the quality of the human environment.

(a) Except as provided in paragraph (c) of this section, if an action is covered by a Departmental CX, the bureau is not required to prepare an EA (see subpart D of this part) or an EIS (see subpart E of this part).

(b) The actions listed in § 46.210 are categorically excluded, Department-wide, from preparation of EAs or EISs.

(c) The CEQ Regulations at 40 CFR 1508.4 require agency procedures to provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect and require additional analysis and action. Section 46.215 lists the extraordinary circumstances under which actions otherwise covered by a CX require analyses under NEPA.

(1) Any action that is normally categorically excluded must be evaluated to determine whether it meets any of these extraordinary circumstances, in which case, further analysis and environmental documents must be prepared for the action.

(2) Bureaus must work within existing administrative frameworks, including any existing programmatic agreements, when deciding how to apply any of the § 46.215 extraordinary circumstances.

(d) Congress may establish CXs by legislation, in which case the terms of the legislation determine how to apply the CX.

§ 46.210 Listing of Departmental CXs.

The following actions are categorically excluded under § 46.205(b), unless any of the extraordinary circumstances in § 46.215 apply:

(a) Personnel actions and investigations and personnel services contracts.

(b) Internal organizational changes and facility and bureau reductions and closings.

(c) Routine financial transactions including such things as salaries and expenses, procurement contracts (e.g., in accordance with applicable procedures and Executive Orders for sustainable development or green procurement), guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties.

(d) Departmental legal activities including, but not limited to, such things as arrests, investigations, patents, claims, and legal opinions. This does not include bringing judicial or administrative civil or criminal enforcement actions which are outside the scope of NEPA in accordance with 40 CFR 1508.18(a).

(e) Nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities.

(f) Routine and continuing government business, including such things as supervision, administration, operations, maintenance, renovations, and replacement activities having limited context and intensity (e.g., limited size and magnitude or short-term effects).

(g) Management, formulation, allocation, transfer, and reprogramming of the Department's budget at all levels. (This does not exclude the preparation of environmental documents for proposals included in the budget when otherwise required.)

(h) Legislative proposals of an administrative or technical nature (including such things as changes in authorizations for appropriations and minor boundary changes and land title transactions) or having primarily economic, social, individual, or institutional effects; and comments and reports on referrals of legislative proposals.

(i) Policies, directives, regulations, and guidelines:

(1) That are of an administrative, financial, legal, technical, or procedural nature; or

(2) Whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

(j) Activities which are educational, informational, advisory, or consultative to other agencies, public and private entities, visitors, individuals, or the general public.

(k) Hazardous fuels reduction activities using prescribed fire not to exceed 4,500 acres, and mechanical

methods for crushing, piling, thinning, pruning, cutting, chipping, mulching, and mowing, not to exceed 1,000 acres. Such activities:

(1) Shall be limited to areas—

(i) In wildland-urban interface; and

(ii) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface;

(2) Shall be identified through a collaborative framework as described in ''A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10–Year Comprehensive Strategy Implementation Plan;''

(3) Shall be conducted consistent with bureau and Departmental procedures and applicable land and resource management plans;

(4) Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; and

(5) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction. (Refer to the ESM Series for additional, required guidance.)

(l) Post-fire rehabilitation activities not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds) to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities must comply with the following (Refer to the ESM Series for additional, required guidance.):

(1) Shall be conducted consistent with bureau and Departmental procedures and applicable land and resource management plans;

(2) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and

(3) Shall be completed within three years following a wildland fire.

§ 46.215 CXs: Extraordinary circumstances.

Extraordinary circumstances (see § 46.205(c)) exist for individual actions within CXs that may meet any of the criteria listed in paragraphs (a) through (l) of this section. Applicability of extraordinary circumstances to CXs is determined by the Responsible Official.

(a) Have significant impacts on public health or safety.

(b) Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (E.O. 11990); floodplains (E.O. 11988); national monuments; migratory birds; and other ecologically significant or critical areas.

(c) Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102(2)(E)].

(d) Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

(e) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

(f) Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

(g) Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places.

(h) Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.

(i) Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.

(j) Have a disproportionately high and adverse effect on low income or minority populations (E.O. 12898).

(k) Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (E.O. 13007).

(l) Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and E.O. 13112).

§ 46.220 How to designate lead agencies.

(a) In most cases, the Responsible Official should designate one Federal agency as the lead with the remaining Federal, State, tribal governments, and local agencies assuming the role of cooperating agency. In this manner, the other Federal, State, and local agencies can work to ensure that the NEPA document will meet their needs for adoption and application to their related decision(s).

(b) In some cases, a non-Federal agency (including a tribal government) must comply with State or local requirements that are comparable to the NEPA requirements. In these cases, the Responsible Official may designate the non-Federal agency as a joint lead agency. (See 40 CFR 1501.5 and 1506.2 for a description of the selection of lead agencies, the settlement of lead agency disputes, and the use of joint lead agencies.)

(c) In some cases, the Responsible Official may establish a joint lead relationship among several Federal agencies. If there is a joint lead, then one Federal agency must be identified as the agency responsible for filing the EIS with EPA.

§ 46.225 How to select cooperating agencies.

(a) An ''eligible governmental entity'' is:

(1) Any Federal agency that is qualified to participate in the development of an EIS as provided for in 40 CFR 1501.6 and 1508.5 by virtue of its jurisdiction by law, as defined in 40 CFR 1508.15; or

(2) Any Federal agency that is qualified to participate in the development of an EIS by virtue of its special expertise, as defined in 40 CFR 1508.26; or

(3) Any non-Federal agency (State, Tribal, or local) with qualifications similar to those in paragraphs (a)(1) and (a)(2) of this section.

(b) Except as described in paragraph (c) of this section, the Responsible Official for the lead bureau must invite eligible governmental entities to participate as cooperating agencies when the bureau is developing an EIS.

(c) The Responsible Official for the lead bureau must consider any request by an eligible governmental entity to participate in a particular EIS as a cooperating agency. If the Responsible Official for the lead bureau denies a request, or determines it is inappropriate to extend an invitation, it must state the reasons in the EIS. Denial of a request or not extending an invitation for cooperating agency status is not subject to any internal administrative appeals process, nor is it a final agency action subject to review under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

(d) Bureaus should work with cooperating agencies to develop and adopt a memorandum of understanding

that includes their respective roles, assignment of issues, schedules, and staff commitments so that the NEPA process remains on track and within the time schedule. Memoranda of understanding must be used in the case of non-Federal agencies and must include a commitment to maintain the confidentiality of documents and deliberations during the period prior to the public release by the bureau of the draft NEPA document.

(e) The procedures of this section may be used for an EA.

§ 46.230 Role of cooperating agencies in the NEPA process.

In accordance with 40 CFR 1501.6, throughout the development of an environmental document the lead bureau will collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise. Cooperating agencies may, by agreement with the lead bureau, help to do the following:

(a) Identify issues to be addressed in the EIS;

(b) Arrange for the collection and/or assembly of necessary resource, environmental, social, economic, and institutional data;

(c) Analyze data;

(d) Develop alternatives;

(e) Evaluate alternatives and estimate the effects of implementing each alternative; and

(f) Carry out any other task necessary for the development of the EIS.

§ 46.235 NEPA scoping process.

(a) Scoping is a process that continues throughout the planning and early stages of preparation of an EIS. While scoping is required for an EIS, as described in this section, it may also be appropriate to engage in scoping during the preparation of an EA. For an EIS, bureaus must use scoping to engage State, local and tribal governments, and the public in the early identification of concerns, potential impacts, possible alternative actions, and interdisciplinary considerations. Scoping is an opportunity to bring agencies and applicants together to lay the groundwork for setting time limits, expediting reviews where possible, integrating other environmental reviews, and identifying any major obstacles that could delay the process. The Responsible Official shall determine whether, in some cases, the invitation requirement in 40 CFR 1501.7(a)(1) may be satisfied by including such an invitation in the notice of intent (NOI).

(b) In scoping meetings, newsletters, or other communication methods, the lead agency must make it clear that the lead agency is ultimately responsible for the scope of an EIS and that suggestions obtained during scoping are considered to be advisory.

§ 46.240 Establishing time limits for the NEPA process.

(a) For each proposed action, on a case-by-case basis, bureaus shall:

(1) Set time limits from the start through to the finish of the NEPA analysis and documentation consistent with the requirements of 40 CFR 1501.8 and other legal obligations, including statutory and regulatory timeframes;

(2) Consult with cooperating agencies in setting time limits; and

(3) Encourage cooperating agencies to meet established time frames.

(b) Time limits should reflect the availability of personnel and funds. Efficiency of the NEPA process is dependent on the management capabilities of the lead bureau, which must assemble a qualified staff commensurate with the type of project to be analyzed to ensure timely completion of NEPA documents.

Subpart D—Environmental Assessments

§ 46.300 Purpose of an EA and when it must be prepared.

The purpose of an EA is to allow the Responsible Official to determine whether to prepare an EIS or a FONSI.

(a) A bureau must prepare an EA for all proposed Federal actions, except those:

(1) That are covered by a CX;

(2) That are covered sufficiently by an earlier environmental document as determined by the Responsible Official; or

(3) For which the bureau has already decided to prepare an EIS.

(b) A bureau may prepare an EA for any proposed action at any time to:

(1) Assist in planning and decision-making;

(2) Further the purposes of NEPA when no EIS is necessary; or

(3) Facilitate EIS preparation.

§ 46.305 Public involvement in the EA process.

(a) The bureau must provide for public notification when an EA is being prepared. The bureau must, to the extent practicable, provide for public involvement when an EA is being prepared. However, the method for providing opportunities for public involvement is at the discretion of the bureau.

(1) The bureau must consider comments resulting from the notice that are timely received, whether specifically solicited or not.

(2) Although scoping is not required, the bureau may apply a scoping process to an EA.

(b) Publication of a ''draft'' EA is not required. Bureaus may seek comments on an EA if they determine it to be appropriate, such as when the level of public interest or the uncertainty of effects warrants.

(c) The bureau must notify the public of the availability of an EA and any associated FONSI once they have been completed. Comments on a FONSI must be solicited only as required by 40 CFR 1501.4(e)(2).

(d) Bureaus may allow cooperating agencies (as defined in § 46.225) to participate in developing EAs.

§ 46.310 Contents of an EA.

(a) At a minimum, an EA must include brief discussions of:

(1) The proposal;

(2) The need for the proposal;

(3) The environmental impacts of the proposed action;

(4) The environmental impacts of the alternatives considered; and

(5) A list of agencies and persons consulted.

(b) When there is consensus about the proposed action with respect to alternative uses of available resources, the EA need only consider the proposed action and proceed without consideration of additional alternatives, including the no action alternative. (See section 102(2)(e) of NEPA).

(c) In addition, an EA may describe a broader range of alternatives to facilitate planning and decision-making.

(d) A proposed action or alternative(s) may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the alternative and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and environmental effects analysis for the adaptive actions approved.

(e) The level of detail and depth of impact analysis should normally be limited to the minimum needed to determine whether there would be significant environmental effects.

(f) Bureaus may choose to provide additional detail and depth of analysis as appropriate in those EAs prepared under § 46.300(b).

(g) An EA must contain objective analyses that support conclusions concerning environmental impacts.

§ 46.315 How to format an EA.

(a) An EA may be prepared in any format useful to facilitate planning, decision-making, and appropriate public participation.

(b) An EA may be accompanied by any other planning or decision-making document. The portion of the document that analyzes the environmental impacts of the proposal and alternatives must be clearly and separately identified and not spread throughout or interwoven into other sections of the document.

§ 46.320 Adopting EAs prepared by another agency, entity, or person.

(a) A Responsible Official may adopt an EA prepared by another agency, entity, or person, including an applicant, if the Responsible Official:

(1) Independently reviews the EA; and

(2) Finds that the EA complies with this subpart and relevant provisions of the CEQ Regulations and with other program requirements.

(b) When appropriate, the Responsible Official may augment the EA to be consistent with the bureau's proposed action.

(c) In adopting or augmenting the EA, the Responsible Official will cite the original EA.

(d) The Responsible Official must ensure that its bureau's public involvement requirements have been met before it adopts another agency's EA.

§ 46.325 Conclusion of the EA process.

(a) Upon review of the EA by the Responsible Official, the EA process concludes in either:

(1) A NOI to prepare an EIS;

(2) A FONSI; or

(3) No further action on the proposal.

(b) Bureaus must document the final decision reached under paragraph (a) of this section.

Subpart E—Environmental Impact Statements

§ 46.400 Timing of EIS development.

(a) The bureau must prepare an EIS for each proposed major Federal action significantly affecting the quality of the human environment before making a decision on whether or not to proceed with the proposed action.

(b) The Responsible Official must inform applicants as soon as practicable of any responsibility they will bear for funding environmental analyses associated with their proposals.

§ 46.405 Remaining within page limits.

To the extent possible, bureaus should use techniques such as incorporation by reference and tiering in an effort to remain within the normal page limits stated in 40 CFR 1502.7.

§ 46.415 EIS format.

The Responsible Official may use any EIS format and design as long as the statement is in accordance with 40 CFR 1502.10.

(a) *Contents.* The Responsible Official may use any EIS format as long as the statement discloses:

(1) A statement of the purpose and need for the action;

(2) A description of the proposed action;

(3) The environmental impact of the proposed action;

(4) A brief description of the affected environment;

(5) Any adverse environmental effects which cannot be avoided should the proposal be implemented;

(6) Alternatives to the proposed action;

(7) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity;

(8) Any irreversible or irretrievable commitments of resources which would be involved in the proposed action should it be implemented; and

(9) The incremental process used, if any, of coordination with other Federal agencies, State, Tribal and local governments, and commonly recognized community groups pursuant to §§ 46.110, 46.145 and 46.155 and the results thereof.

(b) *Alternatives.* The EIS shall document the examination of reasonable alternatives to the proposed action. Reasonable alternatives are those that meet the purpose and need and address one or more significant issues (40 CFR 1501.7) related to the proposed action. Since an alternative may be developed to address more than one significant issue, no specific number of alternatives is required or prescribed. In addition to the requirements at 40 CFR 1502.14, the Responsible Official has an option to use the following procedures to develop and analyze alternatives.

(1) The effects of the no-action alternative may be documented by contrasting the current condition and expected future condition should the proposed action not be undertaken with the impacts of the proposed action and any reasonable alternatives.

(2) To facilitate collaborative processes and sound decisions, the Responsible Official may collaborate with interested parties to modify a proposed action and alternative(s) under consideration prior to issuing a draft EIS. In such cases the Responsible Official may consider the incremental changes as alternatives considered. The documentation of these incremental changes to a proposed action or alternatives may be incorporated by reference in accordance with 40 CFR 1502.21 rather than duplicating the description and analysis in the statement.

(3) A proposed action or alternative(s) may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the alternative and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and environmental effects analysis for the adaptive actions approved.

(c) *Circulating and filing draft and final EISs.*

(1) The draft and final EISs shall be filed with EPA's Office of Federal Activities in Washington, DC (40 CFR 1506.9).

(2) If preliminary drafts are prepared, the Responsible Official shall make those preliminary draft and preliminary final EISs available to those interested and affected persons and agencies for comment; however, requirements at 40 CFR 1506.10 and 40 CFR 1502.19 shall only apply to the last draft statement and the final statement.

§ 46.420 Terms used in an EIS.

The following terms are commonly used to describe concepts or activities in an EIS:

(a) *Statement of purpose and need.* In accordance with 40 CFR 1502.13, the statement of purpose and need briefly indicates the underlying purpose and need to which the bureau is responding.

(1) In some instances it may be appropriate for the bureau to describe its ''purpose'' and its ''need'' as distinct aspects. The ''need'' for the action may be described as the underlying problem or opportunity to which the agency is responding with the action. The ''purpose'' may refer to the goal or objective that the agency is trying to achieve, and should be stated to the extent possible, in terms of desired outcomes.

(2) When an agency is asked to approve an application or permit, the agency should consider the needs and goals of the parties involved in the application or permit as well as the public interest.

(b) *Reasonable alternatives.* In addition to the requirements of 40 CFR 1502.14, this term also includes

alternatives that are technically and economically practical or feasible and that meet the purpose and need of the proposed action.

(c) *Range of alternatives.* This term includes all alternatives that would reasonably accomplish the purpose of the proposed action, that will be rigorously explored and objectively evaluated as well as other alternatives that are analyzed in any preliminary draft or preliminary final EIS.

(d) *Proposed action.* This term refers to the agency activity under consideration. It includes a non-Federal entity's planned activity that falls under a Federal agency's authority to issue permits, licenses, grants, rights-of-way, or other common Federal approvals, funding, or regulatory instruments. The proposed action:

(1) Is not necessarily, but may become, during the NEPA process, a preferred alternative or an environmentally preferable alternative; and

(2) Must be clearly described in order to proceed with NEPA analysis.

(e) *Preferred alternative.* This term refers to the alternative which the agency believes would best accomplish the purpose and need of the proposed action, while fulfilling its statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors. It may or may not be the same as the agency's or the non-Federal entity's proposed action.

(f) *No action alternative.* This term has two interpretations. First ''no action'' may mean ''no change'' from a current management direction or level of management intensity. Second ''no action'' may mean ''no project'' in cases where a new project is proposed for construction. Regardless of the interpretation, a ''no action'' alternative is required to be analyzed in an EIS.

§ 46.425 Identification of the preferred alternative in an EIS.

(a) Unless another law prohibits the expression of a preference, the draft EIS should identify the bureau's preferred alternative or alternatives, if one or more exists.

(b) Unless another law prohibits the expression of a preference, the final EIS must identify the bureau's preferred alternative.

§ 46.430 Environmental review and consultation requirements.

(a) An EIS that also addresses other environmental review and consultation requirements must clearly identify and discuss all the associated analyses, studies, and surveys relied upon by the agency as a part of that review and consultation. Also:

(1) The EIS should indicate that the associated analyses are included;

(2) The EIS must reference or include as an appendix any supporting analyses or reports; and

(3) The bureau preparing the EIS must send copies of all supporting analyses or reports to reviewing agencies as appropriate in accordance with applicable regulations or procedures.

(b) The draft EIS must list all Federal permits, licenses, or approvals that must be obtained to implement the proposal. To the extent possible and authorized by law, the environmental analyses for these related permits, licenses, and approvals should be integrated and performed concurrently. The bureau may complete the NEPA analysis before all approvals are in place.

§ 46.435 Inviting comments.

(a) A bureau must seek comment from the public as part of the NOI to prepare an EIS and notice of availability on the draft EISs;

(b) In addition to paragraph (a) of this section, a bureau must request comments from:

(1) Federal agencies;

(2) State agencies through procedures established by the Governor under E.O. 12372;

(3) Local agencies, to the extent that they include the affected local jurisdictions; and

(4) Applicant, if any, and persons or organizations who may be interested or affected.

(c) The bureau must request comments from the tribal government, unless the tribal government has designated an alternate review process, when the proposed action may affect the environment of either:

(1) Indian trust or restricted land; or

(2) Other Indian trust resources, trust assets, or tribal health and safety.

(d) A bureau does not need to delay preparation and issuance of a final EIS when any Federal, State, and local agencies, or tribal governments from which comments must be obtained or requested do not comment within the prescribed time period.

§ 46.440 Eliminating duplication with State and local procedures.

A bureau must incorporate in its regulations provisions allowing a State agency to jointly prepare an EIS, to the extent provided in 40 CFR 1506.2.

§ 46.445 Preparing a legislative EIS.

When required, the Department must ensure that a legislative EIS is included as a part of the formal transmittal of a legislative proposal to the Congress.

§ 46.450 Identifying the environmentally preferable alternative.

In accordance with the requirements of 40 CFR 1505.2, a bureau must identify the environmentally preferable alternative in the ROD. It is not necessary that the environmentally preferable alternative be selected in the ROD.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 071218860–7866–01]

RIN 0648–AW26

Pacific Halibut Fisheries; Catch Sharing Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to approve and implement changes to the Pacific Halibut Catch Sharing Plan (Plan) for the International Pacific Halibut Commission's (IPHC or Commission) regulatory Area 2A off Washington, Oregon, and California (Area 2A). NMFS proposes to implement the portions of the Plan and management measures that are not implemented through the IPHC, which includes the sport fishery management measures for Area 2A. These actions are intended to enhance the conservation of Pacific halibut, to provide greater angler opportunity where available, and to protect yelloweye rockfish and other overfished groundfish species from incidental catch in the halibut fisheries.

DATES: Comments on the proposed changes to the Plan and on the proposed domestic Area 2A halibut management measures must be received no later than 5 p.m., local time on February 1, 2008.

ADDRESSES: Copies of the Plan and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) are available from D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070. Electronic copies of the Plan, including proposed changes for 2008, and of the draft RIR/IRFA are also available at the NMFS Northwest Region website: *http://www.nwr.noaa.gov*, click on ''Groundfish & Halibut.''

You may submit comments, identified by RIN 0648–AW26, by any one of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*

• *Fax:* 206–526–6736, Attn: Jamie Goen.

• *Mail:* D. Robert Lohn, Administrator, Northwest Region, NMFS, Attn: Jamie Goen, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: For further information contact Jamie Goen at 206–526–4646 or jamie.goen@noaa.gov.

SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act (Halibut Act) of 1982, at 16 U.S.C. 773c, gives the Secretary of Commerce (Secretary) general responsibility for implementing the provisions of the Halibut Convention between the United States and Canada (Halibut Convention). It requires the Secretary to adopt regulations as may be necessary to carry out the purposes and objectives of the Halibut Convention and the Halibut Act. Section 773c of the Halibut Act authorizes the regional fishery management councils to develop regulations governing the Pacific halibut catch in their corresponding U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Each year between 1988 and 1995, the Pacific Fishery Management Council (Pacific Council) had developed a catch sharing plan in accordance with the Halibut Act to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-treaty harvesters and among non-treaty commercial and sport fisheries in Area 2A.

In 1995, NMFS implemented the Pacific Council-recommended long-term Plan (60 FR 14651, March 20, 1995). In each of the intervening years between 1995 and the present, minor revisions to the Plan have been made to adjust for the changing needs of the fisheries. The Plan allocates 35 percent of the Area 2A TAC to Washington treaty Indian tribes in Subarea 2A–1 and 65 percent to non-Indian fisheries in Area 2A. Additionally, as a result of *U.S.* v. *Washington* (*U.S., et al.* v. *State of Washington, et al.* Case No. 9213 Phase I, Subproceeding No. 92–1, Stipulation and Order, July 7, 1999), the Plan had required 25,000 lb (11.3 mt) dressed weight of halibut to be transferred from the non-treaty Area 2A halibut allocation to the treaty allocation in Area 2A each year for eight years from 2000 through 2007, for a total transfer of 200,000 lb (90.7 mt).

The allocation to non-Indian fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into a directed commercial fishery that is allocated 85 percent of the commercial allocation and an incidental catch in the salmon troll fishery that is allocated 15 percent of the commercial allocation. The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53.30′ N. lat.), Oregon, and California. North of 46°53.30′ N. lat. (Pt. Chehalis), the Plan allows for incidental halibut retention in the primary limited entry longline sablefish fishery when the overall Area 2A TAC is above 900,000 lb (408.2 mt). The Plan also divides the sport fisheries into six geographic subareas, each with separate allocations, seasons, and bag limits.

The Area 2A TAC will be set by the IPHC at its annual meeting on January 15–18, 2008, in Portland, OR. NMFS requests public comments on the Pacific Council's recommended modifications to the Plan and the proposed domestic fishing regulations by February 1, 2008. This allows the public the opportunity to consider the final Area 2A TAC before submitting comments on the proposed rule. The States of Washington and Oregon will conduct public workshops shortly after the IPHC meeting to obtain input on the sport season dates. After the Area 2A TAC is known and after NMFS reviews public comments and comments from the states, NMFS will issue a final rule for the Area 2A Pacific halibut fisheries concurrent with the IPHC regulations for the 2008 Pacific halibut fisheries.

Pacific Council Recommended Changes to the Plan and Domestic Fishing Regulations

Each year, the states (Washington Department of Fish and Wildlife (WDFW) and Oregon Department of Fish and Wildlife (ODFW)) and the tribes with treaty fishing rights for halibut consider whether changes to the Plan are needed or desired by their fishery participants. Fishery managers from the states hold public meetings before both the September and November Pacific Council meetings to get public input on revisions to the Plan. At the September 2007 Pacific Council meeting, NMFS and WDFW recommended several changes to the Plan, and ODFW and the tribes announced that they had no proposals for revising the Plan in 2008. Following the meeting, the states again reviewed their proposals with the public and drafted their recommended revisions for review and recommendation by the Pacific Council.

At its November 5–9, 2007, meeting in San Diego, CA, the Pacific Council considered the results of state-sponsored workshops on the proposed changes to the Plan, NMFS-proposed changes to the Plan, and public comments, and made final recommendations for modifications to the Plan as follows:

(1) Reopen the Washington North Coast subarea June sport fishery on the first Tuesday following June 16;

(2) Clarify that the Saturday offshore opener in the Washington North Coast subarea June sport fishery is contingent on available quota;

(3) Provide flexibility in the date that the entire Washington North Coast subarea sport fishery reopens for one day after June 24;

(4) Retain the opening date of May 1 for the Washington South Coast subarea primary sport fishery in 2008 and, starting in 2009, revise the opening date to May 1 if it is a Sunday, otherwise, open on the first Sunday following May 1;

(5) Set the Washington South Coast subarea primary sport fishery as a 2-day per week fishery, open Sunday and Tuesday;

(6) Set aside 10 percent of the Washington South Coast subarea quota for the nearshore sport fishery once the primary fishery has closed;

(7) Set the Washington South Coast subarea nearshore sport fishery as a 4-day per week fishery, open Friday, Saturday, Sunday, and Tuesday;

(8) Remove outdated language referring to the 25,000 lb annual tribal allocation resulting from the U.S. v. Washington case;

(9) Edit language referring to the number of sport subareas to clarify that there are six rather than seven; and

(10) Revise the flexible inseason management provisions for the sport fisheries to allow modification of subarea quotas in all subareas.

Proposed Changes to the Plan

NMFS is proposing to approve the Pacific Council recommendations and to implement the above-described changes by making the following changes to the Plan:

In section (b) of the Plan, Allocations, revise the first sentence of the first paragraph to remove the reference to ''(1) Except as provided below under (b)(2),'' to read as follows:

This Plan allocates 35 percent of the Area 2A TAC to U.S. treaty Indian tribes in the State of Washington in subarea 2A–1, and 65 percent to non-Indian fisheries in Area 2A.

In section (b) of the Plan, Allocations, remove paragraph (2).

In section (d) of the Plan, Treaty Indian Fisheries, revise the first sentence of the paragraph to read as follows:

Thirty-five percent of the Area 2A TAC is allocated to 12 treaty Indian tribes in subarea 2A–1, which includes that portion of Area 2A north of Point Chehalis, WA (46°53.30′ N. lat.) and east of 125°44.00′ W. long.

In section (f) of the Plan, Sport Fisheries, revise the last sentence of the introductory paragraph to read as follows:

The allocation is further divided as subquotas among six geographic subareas.

In section (f) of the Plan, Sport Fisheries, revise paragraph (1) to read as follows:

Subarea management. The sport fishery is divided into six sport fishery subareas, each having separate allocations and management measures as follows.

In section (f) of the Plan, Sport Fisheries, revise the last sentence of the first paragraph in (1)(ii) to read as follows:

The fishery will then reopen for two days on the first Tuesday and Thursday following June 16, in the following nearshore areas only:

In section (f) of the Plan, Sport Fisheries, revise the first three sentences of the second paragraph in (1)(ii) to read as follows:

If there is sufficient quota, the fishery will reopen for one day on the first Saturday following June 16 in the entire north coast subarea. If sufficient quota remains, the fishery would reopen, as a first priority, in the entire north coast subarea for one day following June 24. If there is insufficient quota remaining to reopen the entire north coast subarea for another day, then the nearshore areas described above would reopen following June 24, up to four days per week (Thursday through Sunday), until the remaining subarea quota is projected to be taken.

In section (f) of the Plan, Sport Fisheries, revise the fourth through eighth sentences of paragraph (1)(iii) to read as follows:

The south coast subarea quota will be allocated as follows: 90 percent for the primary fishery, and 10 percent for the nearshore fishery, once the primary fishery has closed. In 2008, the fishery will open on May 1. Beginning in 2009, the fishery will open on May 1, if it is a Sunday; otherwise, the fishery will open on the first Sunday following May 1. The primary fishery will be open two days per week, Sunday and Tuesday, in all areas, except where prohibited, and the nearshore fishery will be open four days per week, Friday through Sunday and Tuesday, in the area from 47°25.00′ N. lat. south to 46°58.00′ N. lat. and east of 124°30.00′ W. long. The primary fishery will continue until September 30, or until 90 percent of the quota is achieved, whichever is earlier.

In section (f) of the Plan, Sport Fisheries, revise paragraph (5)(ii)(E) to read as follows:

Modification of subarea quotas.

Proposed 2008 Sport Fishery Management Measures

NMFS is proposing sport fishery management measures that are necessary to implement the Plan in 2008. The 2008 TAC for Area 2A will be determined by the IPHC at its annual meeting on January 15–18, 2008, in Portland, OR. Because the 2008 TAC has not yet been determined, these proposed sport fishery management measures use the IPHC staff's preliminary 2008 Area 2A TAC recommendation of 1,000,000 lb (454 mt), which is lower than the 2007 TAC of 1,340,000 lb (608 mt). Where season dates are not indicated, those dates will be provided in the final rule, following determination of the 2008 TAC and consultation with the states and the public. In Section 25 of the annual domestic management measures, ''Sport Fishing for Halibut,'' paragraph (4)(b) is proposed to read as follows:

* * * * *

(4) * * *

(b) The sport fishing subareas, subquotas, fishing dates, and daily bag limits are as follows, except as modified under the inseason actions in § 300.63(c). All sport fishing in Area 2A is managed on a ''port of landing'' basis, whereby any halibut landed into a port counts toward the quota for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

(i) The area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17.30′ N. lat., 124°23.70′ W. long. north to 48°24.10′ N. lat., 124°23.70′ W. long., is not managed inseason relative to its quota. This area is managed by setting a season that is projected to result in a catch of 42,606 lb (19 mt).

(A) The fishing season in eastern Puget Sound (east of 123°49.50′ W. long., Low Point) is (insert season dates) and the fishing season in western Puget Sound (west of 123°49.50′ W. long., Low Point) is (insert season dates), 5 days a week (Thursday through Monday). (The final determination of the season dates will be based on the allowable harvest level and projected 2008 catch rates after the final 2008 TAC is set by the IPHC.)

(B) The daily bag limit is one halibut of any size per day per person.

(ii) The quota for landings into ports in the area off the north Washington coast, west of the line described in paragraph (4)(b)(i) of this section and north of the Queets River (47°31.70′ N. lat.), is 93,243 lb (42 mt).

(A) The fishing seasons are:

(*1*) Commencing on May 15 and continuing 3 days a week (Tuesday, Thursday, and Saturday) until 67,135 lb (30 mt) are estimated to have been taken and the season is closed by the Commission.

(*2*) On June 17 and 19, the fishery will open only in the nearshore areas defined at the end of this paragraph. If there is sufficient quota, the fishery will open for one day on June 21 in the entire north coast subarea. If sufficient quota remains, the fishery would reopen, as a first priority, in the entire north coast subarea for one day following June 24. If there is insufficient quota remaining to reopen the entire north coast subarea for another day, then the nearshore areas described below would reopen following June 24, up to four days per week (Thursday-Sunday), until the overall quota of 93,243 lb (42 mt) are estimated to have been taken and the area is closed by the Commission, or until September 30, whichever is earlier. After June 19, any fishery opening will be announced on the NMFS hotline at 800–662–9825. No halibut fishing will be allowed after June 19 unless the date is announced on the NMFS hotline. The nearshore areas

for Washington's North Coast fishery are defined as follows:

(*i*) WDFW Marine Catch Area 4B, which is all waters west of the Sekiu River mouth, as defined by a line extending from 48°17.30′ N. lat., 124°23.70′ W. long. north to 48°24.10′ N. lat., 124°23.70′ W. long., to the Bonilla-Tatoosh line, as defined by a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35.73′ N. lat., 124°43.00′ W. long.) south of the International Boundary between the U.S. and Canada (at 48°29.62′ N. lat., 124°43.55′ W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(*ii*) Shoreward of the recreational halibut 30–fm boundary line, a modified line approximating the 30–fm depth contour from the Bonilla-Tatoosh line south to the Queets River. The recreational halibut 30–fm boundary line is defined by the following coordinates in the order listed:

(1) 48°24.79′ N. lat., 124°44.07′ W. long.;

(2) 48°24.80′ N. lat., 124°44.74′ W. long.;

(3) 48°23.94′ N. lat., 124°44.70′ W. long.;

(4) 48°23.51′ N. lat., 124°45.01′ W. long.;

(5) 48°22.59′ N. lat., 124°44.97′ W. long.;

(6) 48°21.75′ N. lat., 124°45.26′ W. long.;

(7) 48°21.23′ N. lat., 124°47.78′ W. long.;

(8) 48°20.32′ N. lat., 124°49.53′ W. long.;

(9) 48°16.72′ N. lat., 124°51.58′ W. long.;

(10) 48°10.00′ N. lat., 124°52.58′ W. long.;

(11) 48°05.63′ N. lat., 124°52.91′ W. long.;

(12) 47°56.25′ N. lat., 124°52.57′ W. long.;

(13) 47°40.28′ N. lat., 124°40.07′ W. long.; and

(14) 47°31.70′ N. lat., 124°37.03′ W. long.

(B) The daily bag limit is one halibut of any size per day per person.

(C) Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing in the North Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the North Coast Recreational YRCA with or without halibut on board. The North Coast Recreational YRCA is a C-shaped area off the northern Washington coast intended to protect yelloweye rockfish. The North Coast Recreational YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 48°18.00′ N. lat.; 125°18.00′ W. long.;

(2) 48°18.00′ N. lat.; 124°59.00′ W. long.;

(3) 48°11.00′ N. lat.; 124°59.00′ W. long.;

(4) 48°11.00′ N. lat.; 125°11.00′ W. long.;

(5) 48°04.00′ N. lat.; 125°11.00′ W. long.;

(6) 48°04.00′ N. lat.; 124°59.00′ W. long.;

(7) 48°00.00′ N. lat.; 124°59.00′ W. long.;

(8) 48°00.00′ N. lat.; 125°18.00′ W. long.;

and connecting back to 48°18.00′ N. lat.; 125°18.00′ W. long.

(iii) The quota for landings into ports in the area between the Queets River, WA (47°31.70′ N. lat.) and Leadbetter Point, WA (46°38.17′ N. lat.), is 27,952 lb (13 mt).

(A) The fishing season commences on May 1 and continues 2 days a week (Sunday and Tuesday) in all waters (the primary fishery), except that in the area from 47°25.00′ N. lat. south to 46°58.00′ N. lat. and east of 124°30.00′ W. long. (the Washington South coast, northern nearshore area), the fishing season commences on May 1 and continues 4 days a week (Friday, Saturday, Sunday, and Tuesday). The south coast subarea quota will be allocated as follows: 25,156 lb (11 mt), 90 percent, for the primary fishery, and 2,795 lb (1.3 mt), 10 percent, for the northern nearshore fishery, once the primary fishery has closed. The primary fishery will continue from May 1 until 25,156 lb (11 mt) are estimated to have been taken and the season is closed by the Commission, or until September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining to reopen the primary fishery for another fishing day, then any remaining quota may be used to accommodate incidental catch in the northern nearshore area from 47°25.00′ N. lat. south to 46°58.00′ N. lat. and east of 124°30.00′ W. long. on Fridays and Saturdays, until 27,952 lb (13 mt) is projected to be taken and the fishery is closed by the Commission. If the fishery is closed prior to September 30, and there is insufficient quota remaining to reopen the northern nearshore area for another fishing day, then any remaining quota may be transferred inseason to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline.

(B) The daily bag limit is one halibut of any size per day per person.

(C) Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the South Coast Recreational YRCA. A vessel fishing in the South Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the South Coast Recreational YRCA with or without halibut on board. The South Coast Recreational YRCA is an area off the southern Washington coast intended to protect yelloweye rockfish. The South Coast Recreational YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 46°58.00′ N. lat., 124°48.00′ W. long.;

(2) 46°55.00′ N. lat., 124°48.00′ W. long.;

(3) 46°55.00′ N. lat., 124°49.00′ W. long.;

(4) 46°58.00′ N. lat., 124°49.00′ W. long.;

and connecting back to 46°58.00′ N. lat., 124°48.00′ W. long.

(iv) The quota for landings into ports in the area between Leadbetter Point, WA (46°38.17′ N. lat.) and Cape Falcon, OR (45°46.00′ N. lat.), is 14,402 lb (6.5 mt).

(A) The fishing season commences on May 1, and continues 7 days a week until 10,081 lb (4.6 mt) are estimated to have been taken and the season is closed by the Commission or until July 20, whichever is earlier. The fishery will reopen on August 1 and continue 3 days a week (Friday through Sunday) until 14,402 lb (6.5 mt) have been taken and the season is closed by the Commission, or until September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred inseason to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining quota would be transferred to each state in proportion to its contribution.

(B) The daily bag limit is one halibut of any size per day per person.

(C) Pacific Coast groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod when allowed by Pacific Coast

groundfish regulations, if halibut are on board the vessel.

(v) The quota for landings into ports in the area off Oregon between Cape Falcon (45°46.00′ N. lat.) and Humbug Mountain (42°40.50′ N. lat.), is 189,566 lb (86 mt).

(A) The fishing seasons are:

(*1*) The first season (the ''inside 40–fm'' fishery) commences May 1 and continues 7 days a week through October 31, in the area shoreward of a boundary line approximating the 40–fm (73–m) depth contour, or until the sub-quota for the central Oregon ''inside 40–fm'' fishery (15,165 lb (6.9 mt)) or any inseason revised subquota is estimated to have been taken and the season is closed by the Commission, whichever is earlier. The boundary line approximating the 40–fm (73–m) depth contour between 45°46.00′ N. lat. and 42°40.50′ N. lat. is defined by straight lines connecting all of the following points in the order stated:

(1) 45°46.00′ N. lat., 124°04.49′ W. long.;

(2) 45°44.34′ N. lat., 124°05.09′ W. long.;

(3) 45°40.64′ N. lat., 124°04.90′ W. long.;

(4) 45°33.00′ N. lat., 124°04.46′ W. long.;

(5) 45°32.27′ N. lat., 124°04.74′ W. long.;

(6) 45°29.26′ N. lat., 124°04.22′ W. long.;

(7) 45°20.25′ N. lat., 124°04.67′ W. long.;

(8) 45°19.99′ N. lat., 124°04.62′ W. long.;

(9) 45°17.50′ N. lat., 124°04.91′ W. long.;

(10) 45°11.29′ N. lat., 124°05.19′ W. long.;

(11) 45°05.79′ N. lat., 124°05.40′ W. long.;

(12) 45°05.07′ N. lat., 124°05.93′ W. long.;

(13) 45°03.83′ N. lat., 124°06.47′ W. long.;

(14) 45°01.70′ N. lat., 124°06.53′ W. long.;

(15) 44°58.75′ N. lat., 124°07.14′ W. long.;

(16) 44°51.28′ N. lat., 124°10.21′ W. long.;

(17) 44°49.49′ N. lat., 124°10.89′ W. long.;

(18) 44°44.96′ N. lat., 124°14.39′ W. long.;

(19) 44°43.44′ N. lat., 124°14.78′ W. long.;

(20) 44°42.27′ N. lat., 124°13.81′ W. long.;

(21) 44°41.68′ N. lat., 124°15.38′ W. long.;

(22) 44°34.87′ N. lat., 124°15.80′ W. long.;

(23) 44°33.74′ N. lat., 124°14.43′ W. long.;

(24) 44°27.66′ N. lat., 124°16.99′ W. long.;

(25) 44°19.13′ N. lat., 124°19.22′ W. long.;

(26) 44°15.35′ N. lat., 124°17.37′ W. long.;

(27) 44°14.38′ N. lat., 124°17.78′ W. long.;

(28) 44°12.80′ N. lat., 124°17.18′ W. long.;

(29) 44°09.23′ N. lat., 124°15.96′ W. long.;

(30) 44°08.38′ N. lat., 124°16.80′ W. long.;

(31) 44°08.30′ N. lat., 124°16.75′ W. long.;

(32) 44°01.18′ N. lat., 124°15.42′ W. long.;

(33) 43°51.60′ N. lat., 124°14.68′ W. long.;

(34) 43°42.66′ N. lat., 124°15.46′ W. long.;

(35) 43°40.49′ N. lat., 124°15.74′ W. long.;

(36) 43°38.77′ N. lat., 124°15.64′ W. long.;

(37) 43°34.52′ N. lat., 124°16.73′ W. long.;

(38) 43°28.82′ N. lat., 124°19.52′ W. long.;

(39) 43°23.91′ N. lat., 124°24.28′ W. long.;

(40) 43°20.83′ N. lat., 124°26.63′ W. long.;

(41) 43°17.96′ N. lat., 124°28.81′ W. long.;

(42) 43°16.75′ N. lat., 124°28.42′ W. long.;

(43) 43°13.98′ N. lat., 124°31.99′ W. long.;

(44) 43°13.71′ N. lat., 124°33.25′ W. long.;

(45) 43°12.26′ N. lat., 124°34.16′ W. long.;

(46) 43°10.96′ N. lat., 124°32.34′ W. long.;

(47) 43°05.65′ N. lat., 124°31.52′ W. long.;

(48) 42°59.66′ N. lat., 124°32.58′ W. long.;

(49) 42°54.97′ N. lat., 124°36.99′ W. long.;

(50) 42°53.81′ N. lat., 124°38.58′ W. long.;

(51) 42°50.00′ N. lat., 124°39.68′ W. long.;

(52) 42°49.14′ N. lat., 124°39.92′ W. long.;

(53) 42°46.47′ N. lat., 124°38.65′ W. long.;

(54) 42°45.60′ N. lat., 124°39.04′ W. long.;

(55) 42°44.79′ N. lat., 124°37.96′ W. long.;

(56) 42°45.00′ N. lat., 124°36.39′ W. long.;

(57) 42°44.14′ N. lat., 124°35.16′ W. long.;

(58) 42°42.15′ N. lat., 124°32.82′ W. long.; and

(59) 42°40.50′ N. lat., 124°31.98′ W. long.;

(*2*) The second season (spring season), which is for the ''all-depth'' fishery, is open on *(insert dates beginning with May 8 or 9)*. The projected catch for this season is 130,801 lb (59 mt). If sufficient unharvested catch remains for additional fishing days, the season will re-open. Dependent on the amount of unharvested catch available, the potential season re-opening dates will be: *(insert dates, no later than July 31)*. If NMFS decides inseason to allow fishing on any of these re-opening dates, notice of the re-opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the re-opening dates unless the date is announced on the NMFS hotline. (The final determination of the season dates will be based on the allowable harvest level and projected 2008 catch rates and on input from a public meeting held by ODFW after the 2008 TAC is set by the IPHC.)

(*3*) If sufficient unharvested catch remains, the third season (summer season), which is for the ''all-depth'' fishery, will be open on *(insert dates beginning with August 1)*, or until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, OR, totaling 174,401 lb (79 mt), are estimated to have been taken and the area is closed by the Commission, or October 31, whichever is earlier. NMFS will announce on the NMFS hotline in July whether the fishery will re-open for the summer season in August. No halibut fishing will be allowed in the summer season fishery unless the dates are announced on the NMFS hotline. Additional fishing days may be opened if a certain amount of quota remains after August 3 and August 31. If after August 3, greater than or equal to 60,000 lb (27.2 mt) remains in the combined all-depth and inside 40–fm (73–m) quota, the fishery may re-open every Friday through Sunday, beginning August 8 - 10, and ending October 31. If after August 31, greater than or equal to 30,000 lb (13.6 mt) remains in the combined all-depth and inside 40–fm (73–m) quota, and the fishery is not already open every Friday through Sunday, the fishery may re-open every Friday through Sunday, beginning September 5 - 7, and ending October 31. After August 31, the bag limit may be increased to two fish of any size per person, per day. NMFS will announce on the NMFS hotline whether the summer all-depth fishery will be open

on such additional fishing days, what days the fishery will be open and what the bag limit is.

(B) The daily bag limit is one halibut of any size per day per person, unless otherwise specified. NMFS will announce on the NMFS hotline any bag limit changes.

(C) During days open to all-depth halibut fishing, no Pacific Coast groundfish may be taken and retained, possessed or landed, except sablefish when allowed by Pacific Coast groundfish regulations, if halibut are on board the vessel.

(D) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40–fm (73–m) depth contour, halibut possession and retention by vessels operating seaward of a boundary line approximating the 40–fm (73–m) depth contour is prohibited.

(E) Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not be in possession of any halibut. Recreational vessels may transit through the Stonewall Bank YRCA with or without halibut on board. The Stonewall Bank YRCA is an area off central Oregon, near Stonewall Bank, intended to protect yelloweye rockfish. The Stonewall Bank YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 44°37.46 N. lat.; 124°24.92 W. long.;

(2) 44°37.46 N. lat.; 124°23.63 W. long.;

(3) 44°28.71 N. lat.; 124°21.80 W. long.;

(4) 44°28.71 N. lat.; 124°24.10 W. long.;

(5) 44°31.42 N. lat.; 124°25.47 W. long.;

and connecting back to 44°37.46 N. lat.; 124°24.92 W. long.

(vi) The area south of Humbug Mountain, Oregon (42°40.50′ N. lat.) and off the California coast is not managed inseason relative to its quota. This area is managed on a season that is projected to result in a catch of 6,182 lb (2.8 mt).

(A) The fishing season will commence on May 1 and continue 7 days a week until October 31.

(B) The daily bag limit is one halibut of any size per day per person.

Flexible Inseason Management for Sport Fisheries

Language on flexible inseason management for sport fisheries at 50 CFR 300.63 (c)(2)(v) is proposed to be revised in the same manner as language being revised in section (f)(5)(ii)(E) of the Plan. More specifically, the phrase ''north of Cape Falcon, OR'' is removed from the sentence so that it reads, ''modification of subarea quotas.'' As mentioned in paragraphs (c)(1)(iii) and (iv) of 50 CFR 300.63, unused quota can be moved inseason both north of Cape Falcon, OR, and south of Leadbetter Point, WA, to modify quota in Area 2A sport fisheries if sport fishery subareas are not projected to utilize their respective quotas. Therefore, this revision clarifies the flexible inseason management provisions so that all subarea quotas may be modified inseason, not just subarea quotas north of Cape Falcon.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

NMFS has prepared an RIR/IRFA on the proposed changes to the Plan and annual domestic Area 2A halibut management measures. Copies of these documents are available from NMFS (see **ADDRESSES**).

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The IRFA is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows:

A fish-harvesting business is considered a ''small'' business by the Small Business Administration (SBA) if it has annual receipts not in excess of $4.0 million. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For wholesale businesses, a small business is one that employs not more than 100 people. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $6.5 million. All of the businesses that would be affected by this action are considered small businesses under Small Business Administration guidance.

The proposed changes to the Plan, which allocates the catch of Pacific halibut among users in Washington, Oregon and California, would: (1) reopen the Washington North Coast subarea June sport fishery on the first Tuesday following June 16; (2) clarify that the Saturday offshore opener in the Washington North Coast subarea June sport fishery is contingent on available quota; (3) provide flexibility in the date that the entire Washington North Coast subarea sport fishery reopens for one day after June 24; (4) retain the opening date of May 1 for the Washington South Coast subarea primary sport fishery in 2008 and, starting in 2009, revise the opening date to May 1 if it is a Sunday, otherwise, open on the first Sunday following May 1; (5) set the Washington South Coast subarea primary sport fishery as a 2-day per week fishery, open Sunday and Tuesday; (6) set aside 10 percent of the Washington South Coast subarea quota for the nearshore sport fishery once the primary fishery has closed; (7) set the Washington South Coast subarea nearshore sport fishery as a 4-day per week fishery, open Friday, Saturday, Sunday, and Tuesday; (8) remove outdated language referring to the 25,000 lb annual tribal allocation resulting from the U.S. v. Washington case; (9) edit language referring to the number of sport subareas to clarify that there are six rather than seven; and (10) revise the flexible inseason management provisions for the sport fisheries to allow modification of subarea quotas in all subareas. NMFS also proposes to implement the portions of the Plan and management measures that are not implemented through the IPHC, which includes the sport fishery management measures for Area 2A. These actions are intended to enhance the conservation of Pacific halibut, to provide greater angler opportunity where available, and to protect yelloweye rockfish and other overfished groundfish species from incidental catch in the halibut fisheries.

As mentioned in the preamble, WDFW held state meetings and crafted alternatives to adjust management of the sport halibut fisheries in their state. These alternatives were then narrowed by the state and brought to the Council at the Council's September and November 2007 meetings. Generally, by the time the alternatives reach the Council, and because they have been through the state public review process, they are narrowed down into the proposed action and status quo. There were no alternatives that could have similarly improved angler enjoyment of and participation in the fisheries while simultaneously protecting halibut and co-occurring groundfish species from overharvest.

In 1995, NMFS implemented the Plan, when the TAC was 520,000 pounds (236 mt). In each of the intervening years between 1995 and the present, minor revisions to the Plan have been made to adjust for the changing needs of the

fisheries, even though the TAC reached levels of over 1,000,000 pounds (454 mt), with a peak of 1,480,000 pounds (671 mt) in 2004. Since 2004, there has been very little change in the total allowable catch and sector allocations. In 2006, the Area 2A Halibut TAC set by the IPHC was 1.38 million pounds (626 mt) and for 2007 it was 1.34 million pounds (608 mt). However, preliminary IPHC staff recommendations for the 2008 TAC are lower than the TAC levels since 2001. The preliminary 2008 Area 2A TAC of 1.00 million pounds (454 mt) is lower than previous years due to the IPHC's new stock assessment information, revised selectivity assumptions and revised harvest policy. This is a 25–percent decline from the 2007 TAC. As this is a sizable decline, there may be changes to the regulations described in this proposed rule resulting from IPHC recommendations at their annual meeting in January 2008, or as an outcome of the state public workshops held after the IPHC meeting. Expectations are that any proposed changes in the regulations will be ones that, in implementing the amended Plan, seek to mitigate the adverse impacts of the decline of the TAC in order to maximize available fishing opportunities and benefits to fishing communities.

Six hundred fifty-nine vessels were issued IPHC licenses to retain halibut in 2007. IPHC issues licenses for: the directed commercial fishery in Area 2A, including licenses issued to retain halibut caught incidentally in the primary sablefish fishery (225 licenses in 2007); incidental halibut caught in the salmon troll fishery (292 licenses in 2007); and the charterboat fleet (142 licenses in 2007). No vessel may participate in more than one of these three fisheries per year. Individual recreational anglers and private boats are the only sectors that are not required to have an IPHC license to retain halibut.

Specific data on the economics of halibut charter operations is unavailable. However, in January 2004, the Pacific States Marine Fisheries Commission (PSMFC) completed a report on the overall West Coast charterboat fleet. In surveying charterboat vessels concerning their operations in 2000, the PSMFC estimated that there were about 315 charterboat vessels in operation off Washington and Oregon. In 2000, IPHC licensed 130 vessels to fish in the halibut sport charter fishery. Comparing the total charterboat fleet to the 130 and 142 IPHC licenses in 2000 and 2007, respectively, approximately 41 to 45 percent of the charterboat fleet could participate in the halibut fishery. The PSMFC has developed preliminary estimates of the annual revenues earned by this fleet and they vary by size class of the vessels and home state. Small charterboat vessels range from 15 to 30 ft (4.572 to 9.144 m), and typically carry 5 to 6 passengers. Medium charterboat vessels range from 31 to 49 ft (9.44 to 14.93 m) in length and typically carry 19 to 20 passengers. (Neither state has large vessels of greater than 49 ft (14.93 m) in their fleet.) Average annual revenues from all types of recreational fishing, whalewatching and other activities ranged from $7,000 for small Oregon vessels to $131,000 for medium Washington vessels. Estimates from the RIR show the recreational halibut fishery generated approximately $2.5 million in personal income to West Coast communities, while the non-tribal commercial halibut fishery generated approximately $2.2 million in income impacts. Because these estimated impacts for the entire halibut fishery overall are less than the SBA criteria for individual businesses, these data confirm that charterboat and commercial halibut vessels qualify as small entities under the Regulatory Flexibility Act (RFA).

These changes are authorized under the Pacific Halibut Act, implementing regulations at 50 CFR 300.60 through 300.65, and the Pacific Council process of annually evaluating the utility and effectiveness of Area 2A Pacific halibut management under the Plan. Given the TAC, the proposed sport management measures implement the Plan by managing the recreational fishery to meet the differing fishery needs of the various areas along the coast according to the Plan's objectives. The measures will be very similar to last year's management measures. The changes to the Plan and domestic management measures are minor changes and are intended to help prolong the halibut season, provide increased recreational harvest opportunities, or clarify sport fishery management for fishermen and managers. There are no large entities involved in the halibut fisheries; therefore, none of these changes to the Plan and domestic management measures will have a disproportionate negative effect on small entities versus large entities.

These changes do not include any reporting or recordkeeping requirements. These changes will also not duplicate, overlap or conflict with other laws or regulations. Consequently, these changes to the Plan and annual domestic Area 2A halibut management measures are not expected to meet any of the RFA tests of having a ''significant'' economic impact on a ''substantial number'' of small entities. Nonetheless, NMFS has prepared an IRFA. Through this proposed rule, NMFS is requesting comments on these conclusions.

Pursuant to Executive Order 13175, the Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. At section 302(b)(5), the Magnuson-Stevens Fishery Conservation and Management Act establishes a seat on the Pacific Council for a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho.

The U.S. Government formally recognizes that the 12 Washington Tribes have treaty rights to fish for Pacific halibut. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of Pacific halibut available in the tribes' usual and accustomed (U and A) fishing areas (described at 50 CFR 300.64). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, tribal allocations and regulations, including the proposed changes to the Plan, have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

List of Subjects in 50 CFR Part 300

Fishing, Fisheries, and Indian fisheries.

Dated: December 27, 2007

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*

2. In § 300.63, paragraph (c)(2)(v) is revised to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

* * * * *

(c) * * *

(2) * * *

(v) Modification of subarea quotas.

* * * * *

[FR Doc. E7–25535 Filed 12–31–07; 8:45 am]

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REMINDERS

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Pacific Coast groundfish; comments due by 1-7-08; published 12-21-07 [FR E7-24864]

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Louisiana; comments due by 1-8-08; published 11-9-07 [FR E7-21885]

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Safety Act; implementation; comments due by 1-7-08; published 11-7-07 [FR 07-05477]

Service Contract Act; exemption of certain service contracts; comments due by 1-7-08; published 11-7-07 [FR 07-05481]

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Boeing; comments due by 1-7-08; published 11-23-07 [FR E7-22814]

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Honda Aircraft Co., Model HA-420 Hondajet; comments due by 1-9-08; published 12-10-07 [FR E7-23831]

Pilatus Aircraft Ltd.; Model PC/12/47E airplane; comments due by 1-9-08; published 12-10-07 [FR E7-23837]

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Fee schedule; U.S. cash deposits or obligations offer in lieu of sureties on DOT conformance bonds; comments due by 1-7-08; published 11-21-07 [FR E7-22532]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 3648/P.L. 110–142

Mortgage Forgiveness Debt Relief Act of 2007 (Dec. 20, 2007; 121 Stat. 1803)

H.R. 365/P.L. 110–143

Methamphetamine Remediation Research Act of 2007 (Dec. 21, 2007; 121 Stat. 1809)

H.R. 710/P.L. 110–144

Charlie W. Norwood Living Organ Donation Act (Dec. 21, 2007; 121 Stat. 1813)

H.R. 2408/P.L. 110–145

To designate the Department of Veterans Affairs outpatient clinic in Green Bay, Wisconsin, as the "Milo C. Huempfner Department of Veterans Affairs Outpatient Clinic". (Dec. 21, 2007; 121 Stat. 1815)

H.R. 2671/P.L. 110–146

To designate the United States courthouse located at 301 North Miami Avenue, Miami, Florida, as the "C. Clyde Atkins United States Courthouse". (Dec. 21, 2007; 121 Stat. 1816)

H.R. 3703/P.L. 110–147

To amend section 5112(p)(1)(A) of title 31, United States Code, to allow an exception from the $1 coin dispensing capability requirement for certain vending machines. (Dec. 21, 2007; 121 Stat. 1817)

H.R. 3739/P.L. 110–148

To amend the Arizona Water Settlements Act to modify the requirements for the statement of findings. (Dec. 21, 2007; 121 Stat. 1818)

H.J. Res. 72/P.L. 110–149

Making further continuing appropriations for the fiscal year 2008, and for other purposes. (Dec. 21, 2007; 121 Stat. 1819)

S. 597/P.L. 110–150

To amend title 39, United States Code, to extend the authority of the United States Postal Service to issue a semipostal to raise funds for breast cancer research. (Dec. 21, 2007; 121 Stat. 1820)

S. 888/P.L. 110–151

Genocide Accountability Act of 2007 (Dec. 21, 2007; 121 Stat. 1821)

S. 2174/P.L. 110–152

To designate the facility of the United States Postal Service located at 175 South Monroe Street in Tiffin, Ohio, as the "Paul E. Gillmor Post Office Building". (Dec. 21, 2007; 121 Stat. 1823)

S. 2371/P.L. 110–153

To amend the Higher Education Act of 1965 to make technical corrections. (Dec. 21, 2007; 121 Stat. 1824)

S. 2484/P.L. 110–154

To rename the National Institute of Child Health and Human Development as the Eunice Kennedy Shriver National Institute of Child Health and Human Development. (Dec. 21, 2007; 121 Stat. 1826)

S.J. Res. 8/P.L. 110–155

Providing for the reappointment of Patricia Q. Stonesifer as a citizen regent of the Board of Regents of the Smithsonian Institution. (Dec. 21, 2007; 121 Stat. 1829)

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 2008

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
January 2	Jan 17	Feb 1	Feb 19	Mar 3	Apr 1
January 3	Jan 18	Feb 4	Feb 19	Mar 3	Apr 2
January 4	Jan 22	Feb 4	Feb 19	Mar 4	Apr 3
January 7	Jan 22	Feb 6	Feb 21	Mar 7	Apr 7
January 8	Jan 23	Feb 7	Feb 22	Mar 10	Apr 7
January 9	Jan 24	Feb 8	Feb 25	Mar 10	Apr 8
January 10	Jan 25	Feb 11	Feb 25	Mar 10	Apr 9
January 11	Jan 28	Feb 11	Feb 25	Mar 11	Apr 10
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January 17	Feb 1	Feb 19	Mar 3	Mar 17	Apr 16
January 18	Feb 4	Feb 19	Mar 3	Mar 18	Apr 17
January 22	Feb 6	Feb 21	Mar 7	Mar 24	Apr 21
January 23	Feb 7	Feb 22	Mar 10	Mar 24	Apr 22
January 24	Feb 8	Feb 25	Mar 10	Mar 24	Apr 23
January 25	Feb 11	Feb 25	Mar 10	Mar 25	Apr 24
January 28	Feb 12	Feb 27	Mar 13	Mar 28	Apr 28
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