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WHEN: Tuesday, August 12, 2008
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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

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

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30617; Amdt. No. 3277]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective July 14, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 14, 2008.

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

For Examination—

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

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

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

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

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

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

The Rule

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

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

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

Conclusion

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

amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

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

Issued in Washington, DC on June 27, 2008.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

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6/12/08	PA	CARLISLE	CARLISLE	8/2055	VOR–A, ORIG.
6/12/08	WA	PASCO	TRI-CITIES	8/2128	RNAV (GPS) RWY 21R, ORIG.
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6/13/08	GA	ATLANTA	HARTSFIELD-JACKSON ATLANTA INTL.	8/2454	ILS OR LOC RWY 9L, AMDT 8A.
6/16/08	FL	TITUSVILLE	DUNN AIRPARK	8/2634	TAKE-OFF MINIMUMS AND OBSTACLE DP, ORIG.
6/16/08	RI	WESTERLY	WESTERLY STATE	8/2741	RNAV (GPS) RWY 7, ORIG.
6/16/08	PA	NEW CASTLE	NEW CASTLE MUNI	8/2742	RNAV (GPS) RWY 5, AMDT 1.
6/16/08	PA	NEW CASTLE	NEW CASTLE MUNI	8/2743	NDB RWY 23, AMDT 3.
6/16/08	PA	NEW CASTLE	NEW CASTLE MUNI	8/2744	RNAV (GPS) RWY 23, AMDT 1.
6/16/08	AL	BIRMINGHAM	BIRMINGHAM INTL	8/2761	ILS OR LOC/DME RWY 24, AMDT 1.
6/16/08	NY	ENDICOTT	TRI-CITIES	8/2766	GPS RWY 21, ORIG.
6/16/08	NY	ENDICOTT	TRI-CITIES	8/2772	VOR OR GPS–A, AMDT 4A.
6/18/08	MO	KANSAS CITY	CHARLES B. WHEELER DOWNTOWN	8/2990	ILS OR LOC RWY 3, AMDT 2A.
6/18/08	MO	KANSAS CITY	CHARLES B. WHEELER DOWNTOWN	8/2995	ILS OR LOC RWY 19, AMDT 21.
6/18/08	MO	KANSAS CITY	CHARLES B. WHEELER DOWNTOWN	8/2998	VOR RWY 21, AMDT 13.
6/18/08	MO	KANSAS CITY	CHARLES B. WHEELER DOWNTOWN	8/2999	VOR RWY 19, AMDT 19.
6/18/08	MO	KANSAS CITY	CHARLES B. WHEELER DOWNTOWN	8/3001	VOR RWY 3, AMDT 17.
6/18/08	MO	KANSAS CITY	CHARLES B. WHEELER DOWNTOWN	8/3002	RNAV (GPS) RWY 21, ORIG.
6/18/08	MO	KANSAS CITY	CHARLES B. WHEELER DOWNTOWN	8/3004	RNAV (GPS) RWY 3, ORIG.
6/18/08	MO	KANSAS CITY	CHARLES B. WHEELER DOWNTOWN	8/3005	NDB RWY 19, AMDT 17.
6/19/08	MI	KALAMAZOO	KALAMAZOO/BATTLE CREEK INTL	8/3390	VOR RWY 35, AMDT 17.
6/20/08	PA	ST MARYS MUNI	ST MARYS	8/3470	LOC/DME RWY 28, AMDT 4.
6/20/08	NE	ALLIANCE	ALLIANCE MUNI	8/3539	RNAV (GPS) RWY 30, ORIG.
6/20/08	NE	ALLIANCE	ALLIANCE MUNI	8/3540	LOC/DME RWY 30, ORIG.
6/20/08	IN	WARSAW	WARSAW MUNI	8/3569	VOR OR GPS RWY 9, AMDT 5A.
6/20/08	IN	WARSAW	WARSAW MUNI	8/3570	VOR OR GPS RWY 27, AMDT 6A.
6/23/08	NE	KIMBALL	KIMBALL MUNI/ROBERT E. ARRAJ FIELD.	8/3840	RNAV (GPS) RWY 28, ORIG.
4/22/08	VA	CHASE CITY	CHASE CITY MUNI	8/3845	RNAV (GPS) RWY 36, ORIG.
6/24/08	VA	QUINTON	NEW KENT COUNTY	8/4044	VOR–A, AMDT 1A.
6/25/08	VA	RICHMOND	RICHMOND INTL	8/4245	RNAV (GPS) RWY 16, ORIG.
6/25/08	VA	MARION/WYTHEVILLE	MOUTAIN EMPIRE	8/4246	LOC RWY 26, AMDT 1A.

FDC date	State	City	Airport	FDC No.	Subject
5/31/08	NV	LAS VEGAS	NORTH LAS VEGAS	8/9076	ILS OR LOC RWY 12L, ORIG–A. THIS NOTAM PUBLISHED IN TL08–15 IS HEREBY RESCINDED IN ITS ENTIRETY.
5/31/08	NY	ALBANY	ALBANY INTL	8/9709	ILS OR LOC RWY 19, AMDT 22. THIS NOTAM PUBLISHED IN TL08–15 IS HEREBY RESCINDED IN ITS ENTIRETY.

[FR Doc. E8–15564 Filed 7–11–08; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30616; Amdt. No 3276]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective July 14, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 14, 2008.

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

For Examination—

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

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

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

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

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit nfdc.faa.gov to register.

Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

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

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

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

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

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

The Rule

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

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff

Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on June 27, 2008.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 31 JUL 2008

Monticello, AR, Monticello Muni/Ellis Field, GPS RWY 3, Orig-A, CANCELLED
Monticello, AR, Monticello Muni/Ellis Field, RNAV (GPS) RWY 3, Orig
Monticello, AR, Monticello Muni/Ellis Field, RNAV (GPS) RWY 21, Orig
Monticello, AR, Monticello Muni/Ellis Field, Takeoff Minimums and Obstacle DP, Orig
Monticello, AR, Monticello Muni/Ellis Field, VOR–A, Amdt 6
Greeley, CO, Greeley-Weld County, GPS RWY 27, Orig, CANCELLED
Greeley, CO, Greeley-Weld County, ILS OR LOC RWY 34, Amdt 2
Greeley, CO, Greeley-Weld County, RNAV (GPS) RWY 16, Orig
Greeley, CO, Greeley-Weld County, RNAV (GPS) RWY 27, Orig
Greeley, CO, Greeley-Weld County, RNAV (GPS) RWY 34, Orig
Greeley, CO, Greeley-Weld County, Takeoff Minimums and Obstacle DP, Amdt 3
Greeley, CO, Greeley-Weld County, VOR OR TACAN–A, Amdt 8
Chicago, IL, Chicago Midway Intl, RNAV (GPS) RWY 4R, Amdt 2
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) Y RWY 5L, Amdt 2
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) Y RWY 5R, Amdt 2
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) Y RWY 14, Amdt 2
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) Y RWY 23L, Amdt 2
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) Y RWY 23R, Amdt 2
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) Y RWY 32, Amdt 2
Indianapolis, IN, Indianapolis Intl, RNAV (RNP) Z RWY 5L, Orig
Indianapolis, IN, Indianapolis Intl, RNAV (RNP) Z RWY 5R, Orig
Indianapolis, IN, Indianapolis Intl, RNAV (RNP) Z RWY 14, Orig
Indianapolis, IN, Indianapolis Intl, RNAV (RNP) Z RWY 23L, Orig
Indianapolis, IN, Indianapolis Intl, RNAV (RNP) Z RWY 23R, Orig
Indianapolis, IN, Indianapolis Intl, RNAV (RNP) Z RWY 32, Orig
Terre Haute, IN, Terre Haute International-Hulman Field, LOC BC RWY 23, Amdt 19
Terre Haute, IN, Terre Haute International-Hulman Field, Takeoff Minimums and Obstacle DP, Orig
London, KY, London-Corbin Arpt-Magee Fld, RNAV (GPS) RWY 24, Amdt 1
Beaver Island, MI, Beaver Island, NDB RWY 27, Amdt 1
Beaver Island, MI, Beaver Island, RNAV (GPS) RWY 27, Orig
Owosso, MI, Owosso Community, Takeoff Minimums and Obstacle DP, Amdt 4
International Falls, MN, Falls Intl, COPTER ILS or LOC RWY 31, Amdt 1
International Falls, MN, Falls Intl, ILS or LOC RWY 31, Amdt 9
Mc Comb, MS, Mc Comb/Pike County/John E. Lewis Field, NDB OR GPS RWY 15, Amdt 4A, CANCELLED
Mc Comb, MS, Mc Comb/Pike County/John E. Lewis Field, RNAV (GPS) RWY 15, Orig
Mc Comb, MS, Mc Comb/Pike County/John E. Lewis Field, RNAV (GPS) RWY 33, Orig
Mc Comb, MS, Mc Comb/Pike County/John E. Lewis Field, Takeoff Minimums and Obstacle DP, Orig
Mc Comb, MS, Mc Comb/Pike County/John E. Lewis Field, VOR/DME–A, Amdt 8
Mc Comb, MS, Mc Comb/Pike County/John E. Lewis Field, VOR/DME RNAV OR GPS RWY 33, Amdt 6A, CANCELLED
Wadesboro, NC, Anson County, RNAV (GPS) RWY 34, Amdt 1
Keene, NH, Dillant-Hopkins, GPS RWY 2, Orig-A, CANCELLED
Keene, NH, Dillant-Hopkins, RNAV (GPS) RWY 2, Orig
Newark, NJ, Newark Liberty Intl, Takeoff Minimums and Obstacle DP, Amdt 4
Angel Fire, NM, Angel Fire, Takeoff Minimums and Obstacle DP, Amdt 1
Millbrook, NY, Sky Acres, RNAV (GPS) RWY 35, Amdt 1
Penn Yan, NY, Penn Yan, RNAV (GPS) RWY 1, Amdt 3
Muskogee, OK, Davis Field, RNAV (GPS) RWY 4, Amdt 1
Muskogee, OK, Davis Field, RNAV (GPS) RWY 13, Orig
Muskogee, OK, Davis Field, RNAV (GPS) RWY 22, Orig
Muskogee, OK, Davis Field, RNAV (GPS) RWY 31, Amdt 1
Muskogee, OK, Davis Field, Takeoff Minimums and Obstacle DP, Orig
Ontario, OR, Ontario Muni, NDB RWY 32, Amdt 5
Ontario, OR, Ontario Muni, RNAV (GPS) RWY 14, Orig
Ontario, OR, Ontario Muni, RNAV (GPS) RWY 32, Orig
Lancaster, PA, Lancaster, RNAV (GPS) RWY 26, Amdt 1
Lancaster, PA, Lancaster, VOR/DME RWY 26, Amdt 10
Philadelphia, PA, Philadelphia Intl, Takeoff Minimums and Obstacle DP, Amdt 8
Pittsburgh, PA, Pittsburgh International, RNAV (GPS) RWY 28R, Amdt 4
Pottstown, PA, Pottstown Muni, RNAV (GPS) RWY 26, Orig
Pottstown, PA, Pottstown Muni, VOR–B, Amdt 5
Georgetown, SC, Georgetown County, RNAV (GPS) RWY 23, Orig
Winchester, TN, Winchester Muni, NDB RWY 18, Amdt 6
Winchester, TN, Winchester Muni, RNAV (GPS) RWY 36, Orig
Winchester, TN, Winchester Muni, RNAV (GPS) Y RWY 18, Orig
Winchester, TN, Winchester Muni, RNAV (GPS) Z RWY 18, Orig

Brownsville, TX, Brownsville South Padre Island Intl, ILS OR LOC RWY 13R, Amdt 1
Dallas, TX, Dallas Love Field, ILS OR LOC RWY 31L, Amdt 21
Dallas, TX, Dallas Love Field, RNAV (GPS) RWY 31L, Amdt 1
Port Isabel, TX, Port Isabel-Cameron County, RNAV (GPS) RWY 13, Amdt 1
Port Isabel, TX, Port Isabel-Cameron County, Takeoff Minimums and Obstacle DP, Amdt 2
Moses Lake, WA, Grant County Intl, MLS RWY 32R, Orig-B, CANCELLED
Juneau, WI, Dodge County, RNAV (GPS) RWY 2, Amdt 1
Juneau, WI, Dodge County, RNAV (GPS) RWY 20, Amdt 1
Beckley, WV, Raleigh County Memorial, RNAV (GPS) RWY 1, Orig
Beckley, WV, Raleigh County Memorial, VOR/DME OR GPS RWY 1, Amdt 3A, CANCELLED

Effective 28 AUG 2008

Grand Forks, ND, Grand Forks Intl, RNAV (GPS) RWY 26, Amdt 1A
Ithaca, NY, Ithaca Tompkins Regional, Takeoff Minimums and Obstacle DP, Amdt 4
Waynesburg, PA, Greene County, Takeoff Minimums and Obstacle DP, Orig

Effective 25 SEP 2008

Fort Pierce, FL, St. Lucie County Intl, GPS RWY 9, Orig-B, CANCELLED
Fort Pierce, FL, St. Lucie County Intl, ILS OR LOC RWY 9, Amdt 2
Fort Pierce, FL, St. Lucie County Intl, NDB RWY 27, Amdt 1
Fort Pierce, FL, St. Lucie County Intl, RNAV (GPS) RWY 9, Orig
Fort Pierce, FL, St. Lucie County Intl, RNAV (GPS) RWY 14, Orig
Fort Pierce, FL, St. Lucie County Intl, RNAV (GPS) RWY 27, Orig
Fort Pierce, FL, St. Lucie County Intl, VOR/DME RWY 14, Amdt 8
Pahokee, FL, Palm Beach County Glades, RNAV (GPS) RWY 17, Orig
Pahokee, FL, Palm Beach County Glades, RNAV (GPS) RWY 35, Orig
St Petersburg, FL, Albert Whitted, RNAV (GPS) RWY 7, Amdt 1
St Petersburg, FL, Albert Whitted, RNAV (GPS) RWY 18, Orig-A
St Petersburg, FL, Albert Whitted, RNAV (GPS) RWY 36, Amdt 1
Thomasville, GA, Thomasville Regional, RNAV (GPS) RWY 22, Orig
Bloomington/Normal, IL, Central IL Rgnl Arpt at Bloomington-Normal, VOR RWY 11, Amdt 13, CANCELLED

[FR Doc. E8–15603 Filed 7–11–08; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9415]

RIN 1545–BB84

REMIC Residual Interests—Accounting for REMIC Net Income (Including Any Excess Inclusions) (Foreign Holders)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to income that is associated with a residual interest in a Real Estate Mortgage Investment Conduit (REMIC) and that is allocated through certain entities to foreign persons who have invested in those entities. The foreign persons covered by these regulations include partners in domestic partnerships, shareholders of real estate investment trusts, shareholders of regulated investment companies, participants in common trust funds, and patrons of subchapter T cooperatives. These regulations are necessary to prevent inappropriate avoidance of current income tax liability by foreign persons to whom income from REMIC residual interests is allocated.

DATES: *Effective Date:* These regulations are effective on July 14, 2008.

Dates of Applicability: For dates of applicability, see §§ 1.860A–1(b)(5), 1.863–1(f) and 1.1441–2(f).

FOR FURTHER INFORMATION CONTACT: Arturo Estrada, (202) 622–3900 (not a toll-free number).

Background

This document contains amendments to 26 CFR part 1 under sections 860A, 860G(b), 863, 1441, and 1442 of the Internal Revenue Code (Code). On August 1, 2006, temporary regulations (TD 9272) were published in the **Federal Register** (71 FR 43363). A notice of proposed rulemaking (REG–159929–02) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (71 FR 43398). The preamble to the temporary regulations contains an explanation of these provisions. No comments were received from the public in response to the notice of proposed rule making. Accordingly, this Treasury Decision adopts the proposed regulations without any substantive changes. No public hearing was requested or held.

Dates of Applicability

The regulations regarding the timing of REMIC income inclusions apply to REMIC net income of a foreign person with respect to REMIC residual interests with respect to which the first REMIC net income allocation to the foreign person under section 860C occurs on or after August 1, 2006. The regulations regarding the source of excess inclusions are applicable for taxable years ending after August 1, 2006.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), it has also been determined that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations because these regulations do not have a significant economic impact on a substantial number of small entities. According to the Small Business Administration definition of a ''small business,'' 13 CFR 121.201, a REMIC is classified as an ''Other Financial Vehicle,'' NAICS code 525990, and is considered a small entity if it accumulates less than 6.5 million dollars in annual receipts. It has been determined that REMICs affected by these regulations generally will have greater than 6.5 million dollars in annual receipts and therefore will not generally be classified as small business entities. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Dale Collinson, formerly with the Office of the Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entries for §§ 860A–1T and 860G–3T to read as follows:

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

■ **Par. 2.** Section 1.860A–0 is amended by adding entries for §§ 1.860A–1(b)(5) and 1.860G–3(b) and removing the entries for §§ 1.860A–1T and 1.860G–3T to read as follows:

§ 1.860A–0 Outline of REMIC provisions.

* * * * *

§ 1.860A–1 Effective dates and transition rules.

* * * * *

(b) * * *

(5) Accounting for REMIC net income of foreign persons.

* * * * *

§ 1.860G–3 Treatment of foreign persons.

* * * * *

(b) Accounting for REMIC net income

(1) Allocation of partnership income to a foreign partner.

(2) Excess inclusion income allocated by certain pass-through entities to a foreign person.

■ **Par. 3.** Section 1.860A–1(b)(5) is revised to read as follows:

§ 1.860A–1 Effective dates and transition rules.

* * * * *

(b) * * *

(5) Accounting for REMIC net income of foreign persons. Section 1.860G–3(b) is applicable to REMIC net income (including excess inclusions) of a foreign person with respect to a REMIC residual interest if the first net income allocation under section 860C(a)(1) to the foreign person with respect to that interest occurs on or after August 1, 2006.

§ 1.860A–1T [Removed]

■ **Par. 4.** Section 1.860A–1T is removed.

■ **Par. 5.** Section 1.860G–3 (b) is revised to read as follows:

§ 1.860G–3 Treatment of foreign persons.

* * * * *

(b) *Accounting for REMIC net income*—(1) *Allocation of partnership income to a foreign partner.* A domestic partnership shall separately state its allocable share of REMIC taxable income or net loss in accordance with § 1.702–1(a)(8). If a domestic partnership allocates all or some portion of its allocable share of REMIC taxable income to a partner that is a foreign person, the amount allocated to the foreign partner shall be taken into account by the foreign partner for purposes of sections 871(a), 881, 1441, and 1442 as if that amount was received on the last day of the partnership's taxable year, except to the extent that some or all of the amount is required to be taken into account by the foreign partner at an earlier time under section 860G(b) as a result of a distribution by the partnership to the foreign partner or a disposition of the foreign partner's indirect interest in the REMIC residual interest. A disposition in whole or in part of the foreign partner's indirect interest in the REMIC residual interest may occur as a result of a termination of the REMIC, a disposition of the partnership's residual interest in the REMIC, a disposition of the foreign partner's interest in the partnership, or any other reduction in the foreign partner's allocable share of the portion of the REMIC net income or deduction allocated to the partnership. See § 1.871–14(d)(2) for the treatment of interest received on a regular or residual interest in a REMIC. For a partnership's withholding obligations with respect to excess inclusion amounts described in this paragraph (b)(1), see §§ 1.1441–2(b)(5), 1.1441–2(d)(4), 1.1441–5(b)(2)(i)(A), and §§ 1.1446–1 through 1.1446–7.

(2) *Excess inclusion income allocated by certain pass-through entities to a foreign person.* If an amount is allocated under section 860E(d)(1) to a foreign person that is a shareholder of a real estate investment trust or a regulated investment company, a participant in a common trust fund, or a patron of an organization to which part I of subchapter T applies and if the amount so allocated is governed by section 860E(d)(2) (treating it ''as an excess inclusion with respect to a residual interest held by'' the taxpayer), the amount shall be taken into account for purposes of sections 871(a), 881, 1441, and 1442 at the same time as the time prescribed for other income of the shareholder, participant, or patron from the trust, company, fund, or organization.

§ 1.860G–3T [Removed]

■ **Par. 6.** Section 1.860G–3T is removed.

■ **Par. 7.** Section 1.863–0 is amended by adding an entry for 1.863–1(f) and removing the entries for § 1.863–1T to read as follows:

§ 1.863–1 Allocation of gross income under section 863(a).

* * * * *

(f) *Effective/applicability date.*

■ **Par. 8.** Section 1.863–1 paragraphs (e)(2) and (f) are revised to read as follows:

§ 1.863–1 Allocation of gross income under section 863(a).

* * * * *

(e) * * *

(1) * * *

(2) *Excess inclusion income and net losses.* An excess inclusion (as defined in section 860E(c)) shall be treated as income from sources within the United States. To the extent of excess inclusion income previously taken into account with respect to a residual interest (reduced by net losses previously taken into account under this paragraph), a net loss (described in section 860C(b)(2)) with respect to the residual interest shall be allocated to the class of gross income and apportioned to the statutory grouping(s) or residual grouping of gross income to which the excess inclusion income was assigned.

(f) *Effective/applicability date.* Paragraph (e)(2) of this section applies for taxable years ending after August 1, 2006.

§ 1.863–1T [Removed]

■ **Par. 9.** Section 1.863–1T is removed.

■ **Par. 10.** Section 1.1441–0 is amended by revising the entry for § 1.1441–2(f) and removing the entries for § 1.1441–2T to read as follows:

§ 1.1441–0 Outline of regulation provisions for section 1441.

* * * * *

§ 1.1441–2 Amounts subject to withholding.

* * * * *

(f) Effective/applicability date.

■ **Par. 11.** Section 1.1441–2(b)(5), (d)(4) and (f) are revised to read as follows:

§ 1.1441–2 Amounts subject to withholding.

* * * * *

(b) * * *

(5) *REMIC residual interests.* Amounts subject to withholding include an excess inclusion described in § 1.860G–3(b)(2) and the portion of an amount described in § 1.860G–3(b)(1) that is an excess inclusion.

* * * * *

(d) * * *

(4) *Withholding exemption inapplicable.* The exemption in § 1.1441–2(d) from the obligation to withhold shall not apply to amounts described in § 1.860G–3(b)(1) (regarding certain partnership allocations of REMIC net income with respect to a REMIC residual interest).

* * * * *

§ 1.1441–2T [Removed]

■ **Par. 12.** Section 1.1441–2T is removed.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: June 30, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–15940 Filed 7–11–08; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

[TD 9414]

RIN 1545–BE52

Grantor Retained Interest Trusts—Application of Sections 2036 and 2039

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance on the portion of property transferred to a trust or otherwise, that is properly includible in a grantor's gross estate under Internal Revenue Code (Code) sections 2036 and 2039 if the grantor has retained the use of the property or the right to an annuity, unitrust, or other payment from such property for life, for any period not ascertainable without reference to the grantor's death, or for a period that does not in fact end before the grantor's death. The final regulations affect estates that are required to file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

DATES: *Effective Date:* These regulations are effective on July 14, 2008.

Applicability Date: For dates of applicability, see § 20.2036–1(c)(3) and § 20.2039–1(f).

FOR FURTHER INFORMATION CONTACT: Theresa M. Melchiorre at (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On June 7, 2007, proposed regulations (REG–119097–05) were published in the **Federal Register** [72 FR 31487]. The proposed regulations contain proposed amendments to the Estate Tax Regulations [26 CFR part 20] providing guidance on the portion of a trust properly includible in a grantor's gross estate under sections 2036 and 2039 if the grantor retained the use of property in the trust or the right to an annuity, unitrust, or other payment from the trust for life, for any period not ascertainable without reference to the grantor's death, or for a period that does not in fact end before the grantor's death. The trusts that were the subject of the proposed regulations include without limitation certain charitable remainder trusts (collectively CRTs) such as charitable remainder annuity trusts (CRATs) within the meaning of section 664(d)(1), charitable remainder unitrusts (CRUTs) within the meaning of section 664(d)(2) or (d)(3), and charitable remainder trusts that do not qualify under section 664, as well as other trusts established by a grantor (collectively GRTs) such as grantor retained annuity trusts (GRATs), grantor retained unitrusts (GRUTs), and various forms of grantor retained income trusts (GRITs), such as qualified personal residence trusts (QPRTs) and personal residence trusts (PRTs). A CRT was within the scope of the proposed regulations whether or not the CRT met the qualifications of section 664(d)(1), (d)(2), or (d)(3) because either the CRT was created prior to 1969, there was a defect in the drafting of the CRT, there was no intention to qualify the CRT for the charitable deduction, or for any other reason. A GRT was within the scope of the proposed regulations whether or not the grantor's retained interest was a ''qualified interest'' as defined in section 2702(b).

The proposed regulations incorporate the guidance provided in Rev. Rul. 76–273, 1976–2 CB 268, and Rev. Rul. 82–105, 1982–1 CB 133, by proposing to amend § 20.2036–1 to provide that the portion of the corpus of a CRT and GRT includible in the decedent's gross estate under section 2036 is that portion of the trust corpus necessary to generate a return sufficient to provide the decedent's retained annuity, unitrust, or other payment. See § 601.601(d)(2)(ii)(b). The proposed regulations provide that, in cases where both section 2036 and section 2039 could apply to a retained annuity, unitrust, or other payment in a CRT or a GRT, section 2036 (and therefore, when applicable, section 2035), rather than section 2039, will be applied. Accordingly, the proposed regulations also amend § 20.2039–1 by providing that section 2039 generally shall not be applied to an annuity, unitrust, or other payment retained by a deceased grantor in a CRT or GRT.

Written comments were received on the proposed regulations, and a public hearing was held on September 26, 2007. The proposed regulations, with certain changes made in response to the written and oral comments received, are adopted as final regulations. Although the final regulations provide guidance as to the Code section (specifically, section 2036 or 2039) to be applied in certain circumstances when each of those sections applies to the same trust, the final regulations are not to be construed to foreclose the possibility that any applicable section of the Code (sections 2035 through 2039, or any other section) properly may be applied in the future by the IRS in appropriate circumstances beyond those described in the final regulations.

Summary of Comments and Explanation of Provisions

References to the Terms GRAT and GRUT

A commentator recommended that the terms ''GRAT'' (grantor retained annuity trust) and ''GRUT'' (grantor retained unitrust) in the proposed regulations be replaced with references to § 25.2702–3(b) and (c) because the terms GRAT and GRUT are not statutory or regulatory terms in the Code. In response, the final regulations include both the Treasury Regulation citations and the terms GRAT and GRUT.

Application of Section 2036 to a Retained Interest in a GRAT or a GRUT

A commentator suggested that section 2036 is not applicable to a retained annuity interest in a GRAT to the extent the retained annuity interest is not payable from trust income. The commentator takes the position that the retained annuity interest is payable from principal and/or income, in kind or in cash, and the size of the annuity payment is not defined in relation to trust income. Instead, the commentator suggests that the annuity is defined as a fraction or percentage of the value of the GRAT's original principal, and accordingly, pursuant to section 2033, only the present value of any unpaid annuity payments as of a particular date or event, valued using section 7520, should be includible in the deceased grantor's gross estate. The commentator opined that section 2036 includes a portion of the trust in the gross estate only to the extent that the trust's income must be used to pay the retained annuity.

Another commentator suggested that the method in the proposed regulations for calculating the portion of GRAT or GRUT corpus includible in the deceased grantor's gross estate under section 2036 results in an overstatement of the property required to produce the retained annuity because the method

calculates the property necessary to produce the full dollar value of a fixed annuity over the actuarial life expectancy of the decedent as of the date of death, rather than for the actual term of years. Instead, the commentator stated that the method to be applied should value the retained annuity or unitrust interest, rather than the property in the trust required to produce the retained interest.

In addition, it has come to the attention of the IRS and Treasury Department that certain taxpayers have stated that section 2036 should not be applied to an annuity when the actuarial value of the present value of the remainder interest in the trust is zero, on the theory that the annuity was acquired for full and adequate consideration.

The IRS and Treasury Department have carefully considered these arguments and analyses. The IRS and Treasury Department believe, however, that these positions are not consistent with the language of section 2036(a)(1), its legislative history, and the case law interpreting this section, which require the inclusion in the gross estate of property over which a decedent has retained a ''string'' (the possession or enjoyment of, or the right to the income from the transferred property) for at least one of the required statutory periods (hereinafter referred to as a lifetime interest). This section was enacted in response to a concern that a donor might otherwise be able to remove property from the donor's gross estate by giving that property away before death while retaining the use or benefit of the property. Thus, section 2036 requires inclusion in the gross estate of the property subject to the ''string'', rather than the ''string'' or retained interest itself. For section 2036 purposes, if the grantor retains the possession or enjoyment of, or the right to the income from, the transferred property for life, for any period not ascertainable without reference to the grantor's death, or for a period which does not in fact end before the grantor's death, the value of the property over which the grantor retained the interest is includible in the grantor's gross estate. The interest retained by the grantor of a GRAT or GRUT who dies during the term of the GRAT or GRUT is a retained lifetime interest because the grantor is retaining the possession or enjoyment of, or the right to the income from, the transferred property for one of the statutorily required time periods. Section 2036(a)(1), accordingly, includes in the grantor's gross estate all or a portion of the corpus of the GRAT or GRUT. To conclude otherwise would be to ignore the unambiguous statutory language and the intent of section 2036.

This conclusion is supported by the legislative history and the U.S. Supreme Court's interpretation of section 2036 and its predecessors. See *Commissioner* v. *Church,* 335 U.S. 632, 637–638 (1949); 64 Cong. Rec. H10729 (July 10, 1916) (statements of Messrs. Elston and Kitchin); 71 Cong. Rec. S7078–7079 (March 3, 1931) (statement of Senator Smoot); and 71 Cong. Rec. H7198–7199 (March 3, 1931) (statement of Mr. Hawley).

In *Church,* the Court interpreted the possession and enjoyment clause in section 811(c) (the predecessor to section 2036) in keeping with its historic interpretation. *Church,* 335 U.S. at 645. The Court held that the term ''possession and enjoyment'' in section 811(c) includes in the transferor's gross estate property passing at the transferor's death in which the transferor has retained any type of lifetime interest (for example, income, a life estate, reverter, etc., contingent or otherwise, expressly stated in the transfer document or by operation of state law) that delayed the beneficiaries' actual use of the transferred property. The Court stated, ''It thus sweeps into the gross estate all property the ultimate possession or enjoyment of which is held in suspense until the moment of the decedent's death or thereafter. * * * Testamentary dispositions of an *inter vivos* nature cannot escape the force of this section by hiding behind legal niceties contained in devices and forms created by conveyancers.'' *Church,* 335 U.S. at 646, quoting *Goldstone* v. *United States,* 325 U.S. 687 (1945) and citing *Helvering* v. *Hallock*, 309 U.S. 106 (1940). See, also, *Spiegel's Estate* v. *Commissioner,* 335 U.S. 701 (1949).

In the Act of Oct. 25, 1949, ch. 720, 63 Stat. 891 (1949) (codified at 26 U.S.C. 811(c)(1949)) (1949 Act), Congress amended section 811(c) to include interests retained for a term of years. H.R. Rep. No. 81–1412 at 9 (1949) (Conf. Report). The Conference Report states, in relevant part, that the ''income interests described by section 811(c)(1)(B) [the predecessor to section 2036] and by similar language elsewhere in the conference amendments include reserved rights to the income from transferred property and rights to possess or enjoy non-income-producing property [*i.e.* corpus].'' Id. at 11.

The IRS and Treasury Department believe, based upon the broad statutory language in section 2036, as well as its legislative history and relevant case law, that under section 2036, every type of lifetime interest in property (annuity, income, use or enjoyment of the transferred property, etc.) retained for the requisite time period constitutes the retained possession and enjoyment of the transferred property or the income therefrom, causing inclusion of the transferred property in the transferor's gross estate. This is true regardless of the extent to which the retained interest is paid from the income or the corpus of the transferred property. This interpretation is consistent with the legislative intent specifically expressed by Congress in the 1949 Act's amendment to section 811(c) as well as with the Supreme Court's decision in *Northeastern Pennsylvania National Bank & Trust Company* v. *United States,* 387 U.S. 213 (1967). In that case, the Court held that a bequest to the decedent's spouse of a fixed monthly stipend, payable from trust income or corpus, satisfied the requirement of section 2056(b)(5) that the spouse receive all the income from a specific portion of trust corpus. The specific portion of corpus qualifying for the marital deduction was determined by computing the amount of corpus necessary to produce the guaranteed monthly payment, assuming a fixed rate of return.

In addition, this interpretation is consistent with the regulations under section 662. For trust accounting purposes, § 1.662(a)–2(c) defines the phrase ''the amount of income for the taxable year required to be distributed currently'' to include any amount required to be paid out of income or corpus, limited by the amount of income received by the estate or trust for the taxable year and not paid, credited, or required to be distributed to other beneficiaries for the taxable year. Thus, an annuity required to be paid in all events (whether out of income or corpus) would qualify as income required to be distributed currently to the extent there is income (as defined in section 643(b)) not paid, credited, or required to be distributed to other beneficiaries for the taxable year. If an annuity or a portion of an annuity is deemed to be income required to be distributed currently, it is treated in all respects in the same manner as an amount of taxable income. The phrase ''the amount of income for the taxable year required to be distributed currently'' also includes any amount required to be paid during the taxable year in all events (whether out of income or corpus) pursuant to a court order or decree or under local law, by a decedent's estate as an allowance or award for the support of the decedent's widow or other dependent for a limited period during the administration of the

estate to the extent there is income (as defined in section 643(b)) of the estate for the taxable year not paid, credited, or required to be distributed to other beneficiaries.

With regard to the commentator's suggestion that section 2036 applies only to the extent that the trust principal alone is insufficient to fully satisfy the annuity payment, the IRS and Treasury Department believe that this would condition the estate tax treatment on the nature and performance of the investments selected by the trustee. The application of section 2036 should not be dependent on either the trustee's exercise of his or her discretion to invest in income or nonincome producing assets, or the actual performance of the trust assets.

With regard to the position of certain taxpayers that the full and adequate consideration exception under section 2036 is satisfied when the present value of the remainder interest is zero, the IRS and Treasury Department believe that this exception to section 2036 does not apply. There is a significant difference between the bona fide sale of property to a third party in exchange for an annuity, and the retention of an annuity interest in property transferred to a third party. In the bona fide sale, there is a negotiation and agreement between two parties, each of whom is the owner of a property interest before the sale; each uses his or her own property to provide consideration to the other in exchange for the property interest to be received from the other in the sale. When the transferor retains an annuity or similar interest in the transferred property (as in the case of a GRAT or GRUT), the transferor is not selling the transferred property to a third party in exchange for an annuity because there is no other owner of property negotiating or engaging in a sale transaction with the transferor. The transferor, instead, is transferring the property subject to a retained possession and enjoyment of, or right to, the income from the property. If the grantor retains the interest for life, for any period not ascertainable without reference to the grantor's death, or for a period that does not in fact end before the grantor's death, the property is subject to inclusion in the grantor's gross estate under section 2036.

The portion of the GRAT or GRUT corpus includible in the deceased grantor's gross estate is that portion, valued as of the grantor's death (or the section 2032 alternate valuation date, if applicable), necessary to yield that annual annuity, unitrust, or other payment without reducing or invading principal. This portion is determined by using the section 7520 interest rate in effect on the decedent's date of death (or on the alternate valuation date, if applicable). The IRS has interpreted retained annuity interests under section 2036 in this manner since the enactment of this section in 1916. See Regulations 37 (revised, 1919), Article 24 at 22 (Revenue Act of 1918) or Treasury Department, Treasury Decisions under Internal Revenue Law of the United States, Vol. 21 (Jan.–Dec., 1919), TD 2910, Art. 24 at 771; Regulations 37 (revised, January, 1921), Article 24 at 20 (Revenue Act of 1918) or Treasury Department, Treasury Decisions under Internal Revenue Law of the United States, Vol. 23 (Jan.–Dec., 1921), TD 3145, Art. 24 at 299; Regulations 63 (1922 Edition), Article 20 at 21 (Revenue Act of 1921) or Treasury Department, Treasury Decisions under Internal Revenue Law of the United States, Vol. 24 (Jan.–Dec., 1922), TD 3384, Art. 20 at 1057; Regulations 68 (1924 Edition), Article 18 at 27 (Revenue Act of 1924) or Treasury Department, Treasury Decisions under Internal Revenue Law of the United States, Vol. 27 (Jan.–Dec., 1925), TD 3683, Art. 18 at 107; Regulations 70 (1926 Edition), Article 18 at 25 (Revenue Act of 1926) or Treasury Department, Treasury Decisions under Internal Revenue Law of the United States, Vol. 28 (Jan.–Dec., 1926), TD 3918, Art. 18 at 451; and Regulations 70 (1929 Edition), Article 18 at 27–28 (Revenue Act of 1926). The IRS confirmed this interpretation in Rev. Rul. 76–273 and Rev. Rul. 82–105. Although this guidance predates the advent of GRATs and GRUTs, the analysis and holdings of this guidance consistently has been applied to GRATs, GRUTs, and similar trust arrangements.

Pooled Income Funds

A commentator requested that the regulations be expanded to discuss their impact on both newer (under three years old) and more mature (over three years old) pooled income funds. The age of the fund determines the formula to be used to determine the fund's rate of return, and thus the value of the charitable gift: Funds that are at least three years old use the highest of the three last taxable years' rates of return; funds that are less than three years old generally use the highest of the three calendar-year annual averages of the section 7520 rates minus 1 percent. See § 1.642(c)–6(e)(3) and (4). This distinction based on the duration of the fund, however, is not relevant for purposes of determining the amount included in the transferor's gross estate under section 2036 because the retained interest is the right to all of the income, thus mandating the inclusion of the entire share of the fund's corpus attributable to the transferor. A pooled income fund example has been added to the final regulations as *Example 5* in § 20.2036–1(c)(2).

Remainder Interest in Personal Residences and Farms

A commentator requested that the regulations be expanded to discuss the estate tax implications for charitable gifts of remainder interests in personal residences and farms. The calculation of the charitable deduction is beyond the scope of these final regulations. *Example 2* of § 20.2036–1(c)(1), however, has been added in the final regulations to confirm that, if the transferor transferred a personal residence to a third person while retaining the right to use the personal residence for life or for a term of years, and if the transferor died during that term, the fair market value of the residence on the date of death is includible in the transferor's gross estate under section 2036.

Alternate Valuation Date

A commentator questioned whether the proposed regulations imply that the portion of the trust includible in the grantor's gross estate when the estate has made a section 2032 election is to be determined with reference to the section 7520 rate in effect on the alternate valuation date. The commentator has requested an explanation of why the change in the section 7520 rate is not a change in value due only to the mere lapse of time under § 20.2032–1(f).

When a section 2032 election is made, the section 7520 interest rate (but not the mortality factor) on the alternate valuation date is used to determine the portion of trust corpus includible in the grantor's gross estate under section 2036. The section 7520 interest rate reflects changes due to market conditions, which is permitted under section 2032. Mortality factors are not necessary to determine the portion of trust corpus includible in the grantor's gross estate under section 2036 because under section 2036 the dispositive factor is whether the interest was retained for the requisite statutory period, not the length of the period remaining at the transferor's death. See § 20.2032–1(f) in cases where the mortality factor is applicable and the alternate valuation method under section 2032 is elected.

Alternate Valuation Date Example

A commentator requested an example that illustrates how the rules of § 20.2032–1(d) affect the trust's value and how required annuity payments made after the date of death but before the alternate valuation date affect the estate inclusion computation. Any such example, which would properly belong in the regulations under section 2032, is beyond the scope of these final regulations.

Examples of CRAT and CRUT for a Term of Years

A commentator requested that the regulation be expanded to include examples or a discussion of the estate tax implications for a donor who creates a CRAT or a CRUT for a term of years. In response to this comment, *Examples 1* and *3* of § 20.2036–1(c)(2) are amended in the final regulations to provide that, if the grantor instead had retained an interest in a CRAT or a CRUT for a term of years and had died during the term, the inclusion under section 2036 would be the same as when the grantor retained an interest for life in the CRAT or CRUT.

Graduated GRAT Example

A commentator requested that examples be provided that address a GRAT from which the grantor receives increasing annuity payments. The commentator suggested two alternative methods for valuing the annuity and requested that the IRS provide guidance on the appropriate method. The IRS and Treasury Department agree that such an example would be helpful and appropriate but believe the issue requires further consideration.

Example Illustrating Proposed § 20.2036–1(c)(1)

A commentator recommended that the example found in § 20.2036–1(c)(1)(ii) illustrating the provisions of § 20.2036–1(c)(1)(i) be changed by replacing the reference to D's spouse (E), with D's child (C), to avoid complications with section 2523. The commentator also explained that, even if D dies before E, D has a right at death to more than one-half of trust income because D has the right to the entire trust income in the event E dies before D. The IRS and Treasury Department agree that this example should be provided in the regulations under section 2036, but believe the issue requires further consideration.

Proposed Title for § 20.2036–1(c)(2)

A commentator suggested that the title of proposed regulation § 20.2036–1(c)(2) be changed to ''Retained annuity, unitrust, and other income interests in trusts.'' This comment is adopted because this regulation addresses retained interests in trust income and corpus.

Examples 1 and 3 of Proposed § 20.2036–1(c)(2)

A commentator recommended that *Examples 1* and *3* of proposed regulation § 20.2036–1(c)(2) state that, if D's executor elects to use the alternate valuation date and also elects to use the interest rate component for either of the two months preceding the alternate valuation date, then under § 1.664–2(c) of the Income Tax Regulations, the section 7520 rate and the mortality table for that month should be used for purposes of determining: (1) The portion of trust corpus includible in D's estate; (2) the value of C's continuing annuity interest; and (3) the charitable deduction available for the portion of the CRAT included in D's estate.

The choice as to the monthly interest rate to be used to determine the portion of trust corpus includible in D's estate and the value of C's continuing annuity interest present no issues under section 2036, and are addressed by section 7520. Mortality factors, however, generally are not necessary to determine the portion of trust corpus includible in the grantor's gross estate under section 2036. In cases where a mortality factor is applicable and the alternate valuation method under section 2032 is elected, taxpayers are directed to § 20.2032–1(f). The calculation of the charitable deduction is beyond the scope of these regulations. Accordingly, the issues raised in this comment will not be addressed in these final regulations.

Example 1 of Proposed § 20.2036–1(c)(2)

A commentator had several comments with respect to this example. The commentator pointed out that the trust in the example fails the 10 percent remainder requirement set forth in section 664(d)(1)(D). In response, *Example 1* has been modified in the final regulations so that the trust meets this requirement.

Second, the commentator concluded that the charitable deduction of $30,024.80 arrived at in the example would be correct only if it is assumed that the annuity payments to C were paid entirely from the portion of the trust that is includible in D's gross estate. The commentator suggested that there is no basis for this assumption, and that C's annuity payments are made from the trust as a whole and should be allocated between the included and excluded portion of the trust in proportion to the relative values of each. This approach results in a charitable deduction of $86,683 ($200,000 reduced by two-thirds of the value of C's annuity). In response, it has been determined that it is beyond the scope of the final regulations to address the calculation of the charitable deduction. Accordingly, the charitable deduction calculations in *Example 1* and *Example 3* of § 20.2036–1(c)(2) have been removed from the final regulations.

The commentator requested that the regulations include a statement that, if an inter vivos CRAT is properly formed and subsequently included in the grantor's gross estate, the requirements under section 664(d) for qualification as a CRAT do not need to be retested at the time of the grantor's death for purposes of determining whether the grantor's estate is entitled to a charitable deduction for the value of the remainder interest in the CRAT. This issue is governed by section 664 and is beyond the scope of the final regulations.

Finally, the commentator suggested that *Example 1* be expanded to include a right retained by D to revoke C's annuity interest or to change the identity of the charitable remainderman and to confirm the impact of these retained powers on the charitable deduction. *Example 1* in § 20.2036–1(c)(2) is expanded in the final regulations to include the scenario that D may revoke C's annuity interest or change the identity of the charitable remainderman. The example cites to section 2038 for the inclusion of property in the gross estate on account of such retained powers.

Example 2 of Proposed § 20.2036–1(c)(2)

A commentator suggested that the sentence, ''No additional contributions were made to the Trust after D's transfer at the creation of the Trust'' be removed or changed to reflect that no additional contributions may be made to a GRAT. In response, the final regulations adopt this comment.

A commentator suggested that the example address the amount includible in D's gross estate when the trust is payable to D's estate after D's death. In response, *Example 2* of § 20.2036–1(c)(2) is modified in the final regulations to provide that the portion of trust corpus includible in D's estate under section 2036 is that portion necessary to support D's retained interest at the moment before D's death (calculated as directed in the example). Thus, it is not material whether annuity payments are made to D's estate after D's death.

Effect on Other Documents

The following documents are obsolete as of July 14, 2008:

Rev. Rul. 76–273 (1976–2 CB 268).

Rev. Rul. 82–105 (1982–1 CB 133).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Theresa M. Melchiorre, Office of Chief Counsel, IRS.

List of Subjects in 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 20 is amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

■ **Paragraph 1.** The authority citation for part 20 continues to read in part as follows:

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

■ **Par. 2.** Section 20.2036–1 is amended by:

■ 1. Revising paragraph (a).

■ 2. Designating the undesignated text following paragraph (a)(3)(ii) as paragraph (c)(1)(i) and adding new paragraph headings.

■ 3. Adding paragraphs (c)(1)(ii), (c)(2), and (c)(3).

The revisions and additions read as follows:

§ 20.2036–1 Transfers with retained life estate.

(a) *In general.* A decedent's gross estate includes under section 2036 the value of any interest in property transferred by the decedent after March 3, 1931, whether in trust or otherwise, except to the extent that the transfer was for an adequate and full consideration in money or money's worth (see § 20.2043–1), if the decedent retained or reserved—

(1) For his life;

(2) For any period not ascertainable without reference to his death (if the transfer was made after June 6, 1932); or

(3) For any period which does not in fact end before his death:

(i) The use, possession, right to income, or other enjoyment of the transferred property.

* * * * *

(c) *Retained or reserved interest*—(1) *Amount included in gross estate*—(i) *In general.* * * *

(ii) *Examples.* The application of paragraph (c)(1)(i) of this section is illustrated in the following examples:

Example 1. [Reserved].

Example 2. D transferred D's personal residence to D's child (C), but retained the right to use the residence for a term of years. D dies during the term. At D's death, the fair market value of the personal residence is includible in D's gross estate under section 2036(a)(1) because D retained the right to use the residence for a period that did not in fact end before D's death.

(2) *Retained annuity, unitrust, and other income interests in trusts*—(i) *In general.* This paragraph (c)(2) applies to a grantor's retained use of an asset held in trust or a retained annuity, unitrust, or other interest in any trust (other than a trust constituting an employee benefit) including without limitation the following (collectively referred to in this paragraph (c)(2) as ''trusts''): Certain charitable remainder trusts (collectively CRTs) such as a charitable remainder annuity trust (CRAT) within the meaning of section 664(d)(1), a charitable remainder unitrust (CRUT) within the meaning of section 664(d)(2) or (d)(3), and any charitable remainder trust that does not qualify under section 664(d), whether because the CRT was created prior to 1969, there was a defect in the drafting of the CRT, there was no intention to qualify the CRT for the charitable deduction, or otherwise; other trusts established by a grantor (collectively GRTs) such as a grantor retained annuity trust (GRAT) paying out a qualified annuity interest within the meaning of § 25.2702–3(b) of this chapter, a grantor retained unitrust (GRUT) paying out a qualified unitrust interest within the meaning of § 25.2702–3(c) of this chapter; and various other forms of grantor retained income trusts (GRITs) whether or not the grantor's retained interest is a qualified interest as defined in section 2702(b), including without limitation a qualified personal residence trust (QPRT) within the meaning of § 25.2702–5(c) of this chapter and a personal residence trust (PRT) within the meaning of § 25.2702–5(b) of this chapter. If a decedent transferred property into such a trust and retained or reserved the right to use such property, or the right to an annuity, unitrust, or other interest in such trust with respect to the property decedent so transferred for decedent's life, any period not ascertainable without reference to the decedent's death, or for a period that does not in fact end before the decedent's death, then the decedent's right to use the property or the retained annuity, unitrust, or other interest (whether payable from income and/or principal) constitutes the retention of the possession or enjoyment of, or the right to the income from, the property for purposes of section 2036. The portion of the trust's corpus includible in the decedent's gross estate for Federal estate tax purposes is that portion of the trust corpus necessary to provide the decedent's retained use or retained annuity, unitrust, or other payment (without reducing or invading principal) as determined in accordance with § 20.2031–7 (or § 20.2031–7A, if applicable). The portion of the trust's corpus includible in the decedent's gross estate under section 2036, however, shall not exceed the fair market value of the trust's corpus at the decedent's date of death.

(ii) *Graduated retained interests.* [Reserved].

(iii) *Examples.* The application of paragraphs (c)(2)(i) and (c)(2)(ii) of this section are illustrated in the following examples:

Example 1. (i) Decedent (D) transferred $100,000 to an inter vivos trust that qualifies as a CRAT under section 664(d)(1). The trust agreement provides for an annuity of $7,500 to be paid each year to D for D's life, then to D's child (C) for C's life, with the remainder to be distributed upon the survivor's death to N, a charitable organization described in sections 170(c), 2055(a), and 2522(a). The annuity is payable to D or C, as the case may be, annually on each December 31st. D dies in September 2006, survived by C who was then age 40. On D's death, the value of the trust assets was $300,000 and the section 7520 interest rate was 6 percent. D's executor does not elect to use the alternate valuation date.

(ii) The amount of corpus with respect to which D retained the right to the income, and thus the amount includible in D's gross estate under section 2036, is that amount of corpus necessary to yield the annual annuity payment to D (without reducing or invading principal). In this case, the formula for determining the amount of corpus necessary to yield the annual annuity payment to D is: annual annuity / section 7520 interest rate =

amount includible under section 2036. The amount of corpus necessary to yield the annual annuity is $7,500 / .06 = $125,000. Therefore, $125,000 is includible in D's gross estate under section 2036(a)(1). (The result would be the same if D had retained an interest in the CRAT for a term of years and had died during the term. The result also would be the same if D had irrevocably relinquished D's annuity interest less than 3 years prior to D's death because of the application of section 2035.) If, instead, the trust agreement had provided that D could revoke C's annuity interest or change the identity of the charitable remainderman, see section 2038 with regard to the portion of the trust to be included in the gross estate on account of such a retained power to revoke. Under the facts presented, section 2039 does not apply to include any amount in D's gross estate by reason of this retained annuity. See § 20.2039–1(e).

Example 2. (i) D transferred $100,000 to a GRAT in which D's annuity is a qualified interest described in section 2702(b). The trust agreement provides for an annuity of $12,000 per year to be paid to D for a term of ten years or until D's earlier death. The annuity amount is payable in twelve equal installments at the end of each month. At the expiration of the term of years or on D's earlier death, the remainder is to be distributed to D's child (C). D dies prior to the expiration of the ten-year term. On the date of D's death, the value of the trust assets is $300,000 and the section 7520 interest rate is 6 percent. D's executor does not elect to use the alternate valuation date.

(ii) The amount of corpus with respect to which D retained the right to the income, and thus the amount includible in D's gross estate under section 2036, is that amount of corpus necessary to yield the annual annuity payment to D (without reducing or invading principal). In this case, the formula for determining the amount of corpus necessary to yield the annual annuity payment to D is: annual annuity (adjusted for monthly payments) / section 7520 interest rate = amount includible under section 2036. The Table K adjustment factor for monthly annuity payments in this case is 1.0272. Thus, the amount of corpus necessary to yield the annual annuity is ($12,000 × 1.0272) / .06 = $205,440. Therefore, $205,440 is includible in D's gross estate under section 2036(a)(1). If, instead, the trust agreement had provided that the annuity was to be paid to D during D's life and to D's estate for the balance of the 10-year term if D died during that term, then the portion of trust corpus includible in D's gross estate would still be as calculated in this paragraph. It is not material whether payments are made to D's estate after D's death. Under the facts presented, section 2039 does not apply to include any amount in D's gross estate by reason of this retained annuity. See § 20.2039–1(e).

Example 3. (i) In 2000, D created a CRUT within the meaning of section 664(d)(2). The trust instrument directs the trustee to hold, invest, and reinvest the corpus of the trust and to pay to D for D's life, and then to D's child (C) for C's life, in equal quarterly installments payable at the end of each calendar quarter, an amount equal to 6 percent of the fair market value of the trust as valued on December 15 of the prior taxable year of the trust. At the termination of the trust, the then-remaining corpus, together with any and all accrued income, is to be distributed to N, a charitable organization described in sections 170(c), 2055(a), and 2522(a). D dies in 2006, survived by C, who was then age 55. The value of the trust assets on D's death was $300,000. D's executor does not elect to use the alternate valuation date and, as a result, D's executor does not choose to use the section 7520 interest rate for either of the two months prior to D's death.

(ii) The amount of the corpus with respect to which D retained the right to the income, and thus the amount includible in D's gross estate under section 2036(a)(1), is that amount of corpus necessary to yield the unitrust payments. In this case, such amount of corpus is determined by dividing the trust's equivalent income interest rate by the section 7520 rate (which was 6 percent at the time of D's death). The equivalent income interest rate is determined by dividing the trust's adjusted payout rate by the excess of 1 over the adjusted payout rate. Based on § 1.664–4(e)(3) of this chapter, the appropriate adjusted payout rate for the trust at D's death is 5.786 percent (6 percent × .964365). Thus, the equivalent income interest rate is 6.141 percent (5.786 percent / (1—5.786 percent)). The ratio of the equivalent interest rate to the assumed interest rate under section 7520 is 102.35 percent (6.141 percent / 6 percent). Because this exceeds 100 percent, D's retained payout interest exceeds a full income interest in the trust, and D effectively retained the income from all the assets transferred to the trust. Accordingly, because D retained for life an interest at least equal to the right to all income from all the property transferred by D to the CRUT, the entire value of the corpus of the CRUT is includible in D's gross estate under section 2036(a)(1). (The result would be the same if D had retained, instead, an interest in the CRUT for a term of years and had died during the term.) Under the facts presented, section 2039 does not apply to include any amount in D's gross estate by reason of D's retained unitrust interest. See § 20.2039–1(e).

(iii) If, instead, D had retained the right to a unitrust amount having an adjusted payout for which the corresponding equivalent interest rate would have been less than the 6 percent assumed interest rate of section 7520, then a correspondingly reduced proportion of the trust corpus would be includible in D's gross estate under section 2036(a)(1). Alternatively, if the interest retained by D was instead only one-half of the 6 percent unitrust interest, then the amount included in D's estate would be the amount needed to produce a 3 percent unitrust interest. All of the results in this *Example 3* would be the same if the trust had been a GRUT instead of a CRUT.

Example 4. During life, D established a 15-year GRIT for the benefit of individuals who are not members of D's family within the meaning of section 2704(c)(2). D retained the right to receive all of the net income from the GRIT, payable annually, during the GRIT's term. D dies during the GRIT's term. D's executor does not elect to use the alternate valuation date. In this case, the GRIT's corpus is includible in D's gross estate under section 2036(a)(1) because D retained the right to receive all of the income from the GRIT for a period that did not in fact end before D's death. If, instead, D had retained the right to receive 60 percent of the GRIT's net income, then 60 percent of the GRIT's corpus would have been includible in D's gross estate under section 2036. Under the facts presented, section 2039 does not apply to include any amount in D's gross estate by reason of D's retained interest. See § 20.2039–1(e).

Example 5. In 2003, D transferred $10X to a pooled income fund that conforms to Rev. Proc. 88–53, 1988–2 CB 712 (1988) in exchange for 1 unit in the fund. D is to receive all of the income from that 1 unit during D's life. Upon D's death, D's child (C), is to receive D's income interest for C's life. In 2008, D dies. D's executor does not elect to use the alternate valuation date. In this case, the fair market value of D's 1 unit in the pooled income fund is includible in D's gross estate under section 2036(a)(1) because D retained the right to receive all of the income from that unit for a period that did not in fact end before D's death. See § 601.601(d)(2)(ii)(*b*) of this chapter.

Example 6. D transferred D's personal residence to a trust that met the requirements of a qualified personal residence trust (QPRT) as set forth in § 25.2702–5(c) of this chapter. Pursuant to the terms of the QPRT, D retained the right to use the residence for 10 years or until D's prior death. D dies before the end of the term. D's executor does not elect to use the alternate valuation date. In this case, the fair market value of the QPRT's assets on the date of D's death are includible in D's gross estate under section 2036(a)(1) because D retained the right to use the residence for a period that did not in fact end before D's death.

(3) *Effective/applicability dates.* Paragraphs (a) and (c)(1)(i) of this section are applicable to the estates of decedents dying after August 16, 1954. Paragraphs (c)(1)(ii) and (c)(2) of this section apply to the estates of decedents dying on or after July 14, 2008.

■ **Par. 3.** Section 20.2039–1 is amended by:

■ 1. Revising paragraph (a).

■ 2. Adding new paragraphs (e) and (f).

The revision and addition reads as follows:

§ 20.2039–1 Annuities.

(a) *In general.* A decedent's gross estate includes under section 2039(a) and (b) the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under certain agreements or plans to the extent that the value of the annuity or other payment is attributable to contributions made by the decedent or his employer. Sections 2039(a) and (b), however, have no application to an

amount which constitutes the proceeds of insurance under a policy on the decedent's life. Paragraph (b) of this section describes the agreements or plans to which section 2039(a) and (b) applies; paragraph (c) of this section provides rules for determining the amount includible in the decedent's gross estate; paragraph (d) of this section distinguishes proceeds of life insurance; and paragraph (e) of this section distinguishes annuity, unitrust, and other interests retained by a decedent in certain trusts.

The fact that an annuity or other payment is not includible in a decedent's gross estate under section 2039(a) and (b) does not mean that it is not includible under some other section of part III of subchapter A of chapter 11. However, see section 2039(c) and (d) and § 20.2039–2 for rules relating to the exclusion from a decedent's gross estate of annuities and other payments under certain ''qualified plans.'' Further, the fact that an annuity or other payment may be includible under section 2039(a) will not preclude the application of another section of chapter 11 with regard to that interest. For annuity interests in trust, see paragraph (e)(1) of this section.

* * * * *

(e) *No application to certain trusts.* Section 2039 shall not be applied to include in a decedent's gross estate all or any portion of a trust (other than a trust constituting an employee benefit, but including those described in the following sentence) if the decedent retained a right to use property of the trust or retained an annuity, unitrust, or other interest in the trust, in either case as described in section 2036. Such trusts include without limitation the following (collectively referred to in this paragraph (e) as ''trusts''): Certain charitable remainder trusts (collectively CRTs) such as a charitable remainder annuity trust (CRAT) within the meaning of section 664(d)(1), a charitable remainder unitrust (CRUT) within the meaning of section 664(d)(2) or (d)(3), and any other charitable remainder trust that does not qualify under section 664(d), whether because the CRT was created prior to 1969, there was a defect in the drafting of the CRT, there was no intention to qualify the CRT for the charitable deduction, or otherwise; other trusts established by a grantor (collectively GRTs) such as a grantor retained annuity trust (GRAT) paying out a qualified annuity interest within the meaning of § 25.2702–3(b) of this chapter, a grantor retained unitrust (GRUT) paying out a qualified unitrust interest within the meaning of § 25.2702–3(c) of this chapter; and various forms of grantor retained income trusts (GRITs) whether or not the grantor's retained interest is a qualified interest as defined in section 2702(b), including without limitation a qualified personal residence trust (QPRT) within the meaning of § 25.2702–5(c) of this chapter and a personal residence trust (PRT) within the meaning of § 25.2702–5(b) of this chapter. For purposes of determining the extent to which a retained interest causes all or a portion of a trust to be included in a decedent's gross estate, see § 20.2036–1(c)(1), (2), and (3).

(f) *Effective/applicability dates.* The first, second, and fourth sentences in paragraph (a) of this section are applicable to the estates of decedents dying after August 16, 1954. The fifth sentence of paragraph (a) of this section is applicable to the estates of decedents dying on or after October 27, 1972, and to the estates of decedents for which the period for filing a claim for credit or refund of an estate tax overpayment ends on or after October 27, 1972. The third, sixth, and seventh sentences of paragraph (a) of this section and all of paragraph (e) of this section are applicable to the estates of decedents dying on or after July 14, 2008.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: July 4, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–15941 Filed 7–11–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[FWS–R7–SM–2008–0021; 70101–1335–0064L6]

RIN 1018–AU71

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2008–09 Subsistence Taking of Fish and Shellfish Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Final rule; correcting amendment.

SUMMARY: On March 14, 2008, we published a final rule that established regulations for seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2008–09 regulatory year. This rule, which became effective April 1, 2008, and remains effective through March 31, 2009, contained an error in the regulatory text. This document corrects that error.

DATES: This correction is effective July 14, 2008.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Leader, USDA—Forest Service, Alaska Region, (907) 786–3592.

SUPPLEMENTARY INFORMATION: On March 14, 2008, we published a final rule (73 FR 13761) that established regulations for seasons, harvest limits, methods, and means for taking fish and shellfish for subsistence uses during the 2008–09 regulatory year. This rule became effective April 1, 2008, and remains effective through March 31, 2009. We made an error in our regulatory text. In ____.27(i)(13), there was an extra paragraph (i)(13)(xx), which inserted material about the Taku River in the middle of material pertaining to Prince of Wales/Kosciusko Islands. This correction redesignates extra paragraph (i)(13)(xx) as (xxi). The substance of the regulations remains unchanged.

Administrative Procedure Act

We find good cause to waive notice and comment on this correction, pursuant to 5 U.S.C. 533(b)(B), and the 30-day delay in effective date pursuant to 5 U.S.C. 553(d). Notice and comment are unnecessary because this correction is a minor, technical change in the numbering of the regulations. The substance of the regulations remains unchanged. Therefore, this correction is being published as a final regulation and is effective July 14, 2008.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

■ Accordingly, we amend title 36, part 242, and title 50, part 100, of the Code of Federal Regulations as follows:

PART___—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

■ 2. Amend § ____.27 by:
■ A. Revising paragraph (i)(13)(xix);
■ B. Correctly redesignating the first paragraph designated as paragraph (i)(13)(xx) as paragraph (i)(13)(xxi); and
■ C. Revising paragraph (i)(13)(xx) and newly designated (i)(13)(xxi) to read as follows:

§ ____.27 Subsistence taking of fish.

* * * * *

(i) * * *

(13) * * *

(xix) You may take steelhead trout on Prince of Wales and Kosciusko Islands under the terms of Federal subsistence fishing permits. You must obtain a separate permit for the winter and spring seasons.

(A) The winter season is December 1 through the last day of February, with a harvest limit of two fish per household. You may use only a dip net, handline, spear, or rod and reel. The winter season may be closed when the harvest level cap of 100 steelhead for Prince of Wales/Kosciusko Islands has been reached. You must return your winter season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(B) The spring season is March 1 through May 31, with a harvest limit of five fish per household. You may use only a dip net, handline, spear, or rod and reel. The spring season may be closed prior to May 31 if the harvest quota of 600 fish minus the number of steelhead harvested in the winter subsistence steelhead fishery is reached. You must return your spring season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xx) In addition to the requirement for a Federal subsistence fishing permit, the following restrictions for the harvest of Dolly Varden, brook trout, grayling, cutthroat, and rainbow trout apply:

(A) The daily household harvest and possession limit is 20 Dolly Varden; there is no closed season or size limit;

(B) The daily household harvest and possession limit is 20 brook trout; there is no closed season or size limit;

(C) The daily household harvest and possession limit is 20 grayling; there is no closed season or size limit;

(D) The daily household harvest limit is 6 and the household possession limit is 12 cutthroat or rainbow trout in combination; there is no closed season or size limit;

(E) You may only use a rod and reel;

(F) The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xxi) There is no subsistence fishery for any salmon on the Taku River.

Dated: July 8, 2008.

Sara Prigan,

Federal Register Liaison.

[FR Doc. E8–16026 Filed 7–11–08; 8:45 am]

BILLING CODE 3410–11–P, 4310–55–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1 % annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these

buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No.: B–7772).	Unincorporated areas of Maricopa County (07–09–1354P).	January 10, 2008; January 17, 2008; *Arizona Business Gazette.*	The Honorable Fulton Brock, Chairman, Maricopa County, Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	January 4, 2008 ...	040037
Maricopa (FEMA Docket No.: B–7772).	City of Phoenix (07–09–1713P).	January 3, 2008; January 10, 2008; *Arizona Business Gazette.*	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003.	January 14, 2008	040051
Mohave (FEMA Docket No.: B–7772).	City of Kingman (07–09–0639P).	January 24, 2008; January 31, 2008; *The Kingman Daily Miner.*	The Honorable Lester Byram, Mayor, City of Kingman, 310 North Fourth Street, Kingman, AZ 86401.	May 1, 2008	040060
Yavapai (FEMA Docket No.: B–7772).	Town of Prescott (07–09–1453P).	January 3, 2008; January 10, 2008; *Prescott Daily Courier.*	The Honorable Harvey C. Skoog, Mayor, Town of Prescott Valley, 7501 East Civic Circle, Prescott Valley, AZ 86314.	December 14, 2007.	040121
Yavapai (FEMA Docket No: B–7766).	Unincorporated areas of Yavapai County (07–09–1369P).	December 13, 2007; December 20, 2007; *Prescott Daily Courier.*	The Honorable Chip Davis, Chairman, Yavapai County Board of Supervisors, 1015 Fair Street, Prescott, AZ 86305.	March 20, 2008	040093
Yavapai (FEMA Docket No.: B–7772).	Unincorporated areas of Yavapai County (07–09–1440P).	January 10, 2008; January 17, 2008; *Prescott Daily Courier.*	The Honorable Chip Davis, Chairman, Yavapai County Board of Supervisors, 1015 Fair Street, Prescott, AZ 86305.	April 17, 2008	040093
California:					
San Diego (FEMA Docket No.: B–7772).	City of Chula Vista (07–09–1325P).	January 10, 2008; January 17, 2008; *San Diego Daily Transcript.*	The Honorable Cheryl Cox, Mayor, City of Chula Vista, 276 Fourth Avenue, Chula Vista, CA 91910.	December 27, 2007.	065021
Shasta (FEMA Docket No.: B–7772).	City of Anderson (07–09–1860P).	January 9, 2008; January 16, 2008; *Anderson Valley Post.*	The Honorable Keith Webster, Mayor, City of Anderson, 1887 Howard Street, Anderson, CA 96007.	April 16, 2008	060359
Yuba (FEMA Docket No.: B–7772).	Unincorporated areas of Yuba County (07–09–1893P).	January 10, 2008; January 17, 2008; *The Appeal-Democrat.*	The Honorable Hal Stocker, Chairman, Yuba County Board of Supervisors, 915 Eighth Street, Suite 109, Marysville, CA 95901.	December 26, 2007.	060427
Florida: Collier (FEMA Docket No.: B–7776)	City of Naples (07–04–6595P).	February 7, 2008; February 14, 2008; *Naples Daily News.*	The Honorable Bill Barnett, Mayor, City of Naples, 735 Eighth Street South, Naples, FL 34102.	January 28, 2008	125130
Georgia: Columbia (FEMA Docket No.: B–7772)	Unincorporated areas of Columbia County (07–04–2731P).	December 26, 2007; January 2, 2008; *Columbia County News-Times.*	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	April 2, 2008	130059
Illinois:					
Clinton (FEMA Docket No.: B–7772).	Unincorporated areas of Clinton County (07–05–6034P).	January 24, 2008; January 31, 2008; *The Breese Journal.*	The Honorable Ray Kloeckner, Chairman, Clinton County Board of Directors, 4626 Court Road, Germantown, IL 62245.	January 10, 2008	170044
DuPage (FEMA Docket No.: B–7766).	Unincorporated areas of DuPage County (07–05–2642P).	December 13, 2007; December 20, 2007; *Daily Herald.*	The Honorable Robert J. Schillerstorm, Chairman, DuPage County Board, 505 North County Farm Road, Wheaton, IL 60187.	March 20, 2008	170197
Lake (FEMA Docket No.: B–7772).	Unincorporated areas of Lake County (06–05–BR72P).	January 10, 2008; January 17, 2008; *Lake County News-Sun.*	The Honorable Suzi Schmidt, Chairman, Lake County Board of Commissioners, 18 North County Street, Room 1001, Waukegan, IL 60085.	April 17, 2008	170357
Will (FEMA Docket No.: B–7772).	Village of Plainfield (07–05–5056P).	January 3, 3008; January 10, 2008; *Herald News.*	The Honorable James A. Waldorf, President, Village of Plainfield, 24401 West Lockport Street, Plainfield, IL 60544.	December 11, 2007.	170771

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Indiana: Miami (FEMA Docket No.: B–7772)	City of Peru (08–05–0338P).	December 13, 2007; December 20, 2007; *Peru Tribune*.	The Honorable James R. Walker, Mayor, City of Peru, 35 South Broadway, Peru, IN 46970.	December 31, 2007.	180168
Iowa: Dallas and Polk (FEMA Docket No.: B–7772)	City of Clive (07–07–1800P).	January 18, 2008; January 25, 2008; *The Des Moines Register*.	The Honorable Les Aasheim, Mayor, City of Clive, 1900 Northwest 114th Street, Clive, IA 50325.	April 25, 2008	190488
North Carolina:					
Wake (FEMA Docket No. B–7776).	City of Raleigh (07–04–3146P).	February 4, 2008; February 11, 2008; *The News & Observer*.	The Honorable Charles Meeker, Mayor of the City of Raleigh, P.O. Box 590, Raleigh, North Carolina 27602.	February 29, 2008	370243
Wake (FEMA Docket No. B–7776).	City of Raleigh (07–04–4250P).	February 7, 2008; February 14, 2008; *The News & Observer*.	The Honorable Charles Meeker, Mayor, City of Raleigh, P.O. Box 590, 222 West Hargett Street, Raleigh, North Carolina 27602.	May 14, 2008	370243
Wake (FEMA Docket No. B–7776).	Town of Wake Forest (07–04–4250P).	February 7, 2008; February 14, 2008; *The Wake Weekly*.	The Honorable Vivian Jones, Mayor, Town of Wake Forest, 401 Elm Avenue, Wake Forest, North Carolina 27587.	May 14, 2008	370244
North Dakota:					
Burleigh (FEMA Docket No.: B–7772).	City of Bismark (07–08–0142P).	January 10, 2008; January 17, 2008; *Bismark Tribune*.	The Honorable John Warford, Mayor, City of Bismarck, P.O. Box 5503, Bismarck, ND 58506–5503.	April 17, 2008	380149
Burleigh (FEMA Docket No.: B–7772).	Unincorporated areas of Burleigh County (07–08–0142P).	January 10, 2008; January 17, 2008; *Bismark Tribune*.	The Honorable Marlan Haakenson, Chairman, Burleigh County Commission, 115 South Griffin Street, Bismarck, ND 58504–5309.	April 17, 2008	380017
Oregon:					
Clackamas, Multnomah, Washington (FEMA Docket No.: B–7772).	City of Portland (07–10–0004P).	January 9, 2008; January 16, 2008; *The Gresham Outlook*.	The Honorable Tom Potter, Mayor, City of Portland, 1221 Southwest Fourth Avenue, Suite 340, Portland, OR 97204.	January 28, 2008	410183
Clackamas (FEMA Docket No.: B–7766).	City of Wilsonville (07–10–0469P).	December 12, 2007; December 19, 2007; *Wilsonville Spokesman*.	The Honorable Charlotte Lehan, Mayor, City of Wilsonville, 29786 Southwest Lehan Court, Wilsonville, OR 97070.	December 31, 2007.	410025
South Carolina: Lexington (FEMA Docket No.: B–7772)	Lexington County (07–04–5473P).	December 6, 2007; December 13, 2007; *Lexington County Chronicle*.	The Honorable William C. ''Billy'' Derrick, Chairman, Lexington County Council, 212 South Lake Drive, Lexington, SC 29072.	March 13, 2008	450129
Texas:					
Collin (FEMA Docket No.: B–7772).	City of Allen (07–06–2412P).	January 10, 2008; January 17, 2008; *The Allen American*.	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	April 17, 2008	480131
Collin (FEMA Docket No.: B–7772).	City of Celina (08–06–0373P).	January 3, 2008; January 10, 2008; *The Celina Record*.	The Honorable Corbett Howard, Mayor, City of Celina, 302 West Walnut Street, Celina, TX 75009.	December 26, 2007.	480133
Collin (FEMA Docket No.: B–7766).	City of McKinney (07–06–1354P).	December 13, 2007; December 20, 2007; *McKinney Courier-Gazette*.	The Honorable Bill Whitfield, Mayor, City of McKinney, 222 North Tennessee Street, McKinney, TX 75070.	March 20, 2008	480135
Kaufman (FEMA Docket No.: B–7772).	City of Terrell (07–06–1906P).	January 10, 2008; January 17, 2008; *The Terrell Tribune*.	The Honorable Hal Richards, Mayor, City of Terrell, P.O. Box 310, Terrell, TX 75160.	December 31, 2007.	480416
Montgomery (FEMA Docket No.: B–7772).	Unincorporated areas of Montgomery County (06–06–B643P).	January 9, 2008; January 16, 2008; *The Montgomery County News*.	The Honorable Alan B. Sadler, Montgomery County Judge, 301 North Thompson Street, Suite 210, Conroe, TX 77301.	April 9, 2008	480483
Travis (FEMA Docket No.: B–7772).	Unincorporated areas of Travis County (07–06–02514P).	January 10, 2008; January 17, 2008; *Austin American-Statesman*.	The Honorable Samuel T. Biscoe, Travis County Judge, P.O. Box 1748, Austin, TX 78767.	April 17, 2008	481026
Williamson (FEMA Docket No.: B–7772).	Town of Hutto (07–06–0731P).	January 10, 2008; January 17, 2008; *Round Rock Leader*.	The Honorable Kenneth L. Love, Mayor, Town of Hutto, 401 West Front Street, Hutto, TX 78634.	April 17, 2008	481047

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 3, 2008.

Michael K. Buckley,

Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–15980 Filed 7–11–08; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278; FCC 08–147]

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its rules under the Telephone Consumer Protection Act (TCPA) to require telemarketers to honor registrations with the National Do-Not-Call Registry indefinitely. This action is consistent with Congress's mandate in the Do-Not-Call Improvement Act of 2007, which prohibits the removal of numbers from the Registry unless the consumer cancels the registration or the number has been disconnected and reassigned or is otherwise invalid. The Commission also will continue to coordinate with the FTC on additional ways to improve the Registry's accuracy.

DATES: 47 CFR 64.1200 (c)(2) contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a separate document in the **Federal Register** announcing the effective date for the amendment and information collection requirements. Interested parties (including the general public, OMB, and other Federal agencies) that wish to submit written comments on the PRA information collection requirements must do so on or before September 12, 2008.

ADDRESSES: Interested parties may submit PRA comments identified by OMB Control Number 3060–0519, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- *E-mail:* Parties who choose to file by e-mail should submit their comments to *PRA@fcc.gov*. Please include CG Docket Number 02–278 and OMB Control Number 3060–0519 in the subject line of the message.
- *Mail:* Parties who choose to file by paper should submit their comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica McMahon, Consumer & Governmental Affairs Bureau at (202) 418–0346 (voice), or e-mail *Erica.McMahon@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document *Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991,* Do-Not-Call Registry, Report and Order (DNC *Report and Order*), FCC 08–147, adopted on June 11, 2008, and released on June 17, 2008. FCC 08–147 addresses issues arising from the Commission's *Rules and Regulations Implementing the TCPA of 1991,* Do-Not-Call Registry, Notice of Proposed Rulemaking, (DNC NPRM), FCC 07–203, released on December 4, 2007, published at 72 FR 71099, December 14, 2007, in which the Commission sought comment on its tentative conclusion that registrations with the National Do-Not-Call Registry should be honored indefinitely. The full text of document FCC 08–147 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document FCC 08–147 and any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at their Web site: *http://www.bcpiweb.com* or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). FCC 08–147 can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/policy*.

Paperwork Reduction Act of 1995 Analysis

FCC 08–147 contains modified information collection requirements subject to the PRA of 1995. It will be submitted to OMB for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in this proceeding. Public and agency comments are due September 12, 2008.

In addition, pursuant to the Small Business Paperwork Review Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission has assessed the effect of rule changes and find that there likely will be an increased administrative burden on businesses with fewer than 25 employees. The Commission has taken steps, however, to minimize the information collection burden for small business concerns, including those with fewer than 25 employees. In this present document, we have assessed the effect of these rule changes and find that there likely will be an increased administrative burden on businesses with fewer than 25 employees. However, the amended rules do not require the maintenance of any additional records or require entities to alter their current practices to comply with the National Do-Not-Call Registry. These measures should substantially alleviate any burdens on businesses with fewer than 25 employees.

Synopsis

In the *DNC Report and Order,* the Commission amends its rules under the TCPA to require sellers and/or telemarketers to honor registrations with the National Do-Not-Call Registry so that registrations will not automatically expire based on the current five year registration period. Consistent with the Do Not Call Improvement Act of 2007 (DNC Act), the Commission extends this requirement indefinitely to minimize the inconvenience to consumers of having to re-register their preferences not to receive telemarketing calls and to further the underlying goal of the National Registry to protect consumer privacy rights. The Commission recognizes the importance of maintaining an accurate Do-Not-Call Registry. The DNC Act provides that the FTC shall periodically check the numbers in the Registry and purge those numbers that have been disconnected and reassigned. Currently, the database administrator checks all telephone numbers in the Registry once a month against national databases to remove any disconnected and reassigned

numbers. The Commission intends to work closely with the FTC to consider options to enhance the Registry's accuracy, including whether scrubbing the database more frequently is possible and might improve the overall accuracy of the database. The Commission also encourages local exchange carriers (LECs) to report information on disconnected and reassigned numbers to the FTC subcontractor as timely as possible so that such numbers might be purged more than once per month. The Commission does not believe that the amended rules will be burdensome for sellers and/or telemarketers, including small businesses. Small businesses can continue to access the Registry on an area-code-by-area-code basis and need only purchase those area codes in which the seller intends to telemarket. In addition, the national database provides a single number feature whereby a small number of telephone numbers can be entered on a web page to determine whether any of those numbers are included on the Registry.

The Commission concludes that eliminating the need for consumers to re-register their numbers will enhance consumer privacy protections and benefit the federal government in administering the National Registry. Making registrations permanent adequately balances the need to maintain a high level of accuracy in the National Registry with the desire to have a simple and effective means to limit unwanted telemarketing calls.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in *DNC NPRM,* released by the Commission on December 4, 2007. The Commission sought written public comment on the proposals contained in the Notice, including comment on the IRFA. Comments filed in this proceeding that address the impact of the proposed rules and policies on small entities are discussed below.

Need for, and Objectives of, the Adopted Rules

In 2003, the Commission released the *Rules and Regulations Implementing the TCPA of 1991,* Do-Not-Call Registry, Report and Order, (*2003 TCPA Order*), published at 68 FR 44144, July 25, 2003, revising the TCPA rules to respond to changes in the marketplace for telemarketing. Specifically, the Commission established, in conjunction with the Federal Trade Commission (FTC), a National Do-Not-Call Registry for consumers who wish to avoid unwanted telemarketing calls. The National Do-Not-Call Registry supplements long-standing company-specific rules which require companies to maintain lists of consumers who have directed the company not to contact them by phone. The *2003 TCPA Order* required telemarketers to honor do-not-call registrations on the National Registry for five years. It also revised the company-specific do-not-call rules to reduce the retention period for such do-not-call requests from ten to five years.

On December 4, 2007, the Commission released the *DNC NPRM* seeking comment on its tentative conclusion that registrations with the Registry should be honored indefinitely, unless a number is disconnected or reassigned or the consumer cancels his registration. Subsequently, on February 15, 2007, Congress enacted the Do-Not-Call Improvement Act of 2007 (DNC Act), which prohibits the automatic removal of registered numbers, unless a number has been disconnected, reassigned, or is otherwise invalid. The *DNC Report and Order* amends the Commission's rules so that registrations with the National Do-Not-Call Registry will not expire after a period of five years, consistent with the DNC Act and FTC policy. This action will benefit consumers, who will no longer be required to re-register every five years, thereby reducing any burdens on consumers in terms of the time and effort required to register and the need to remember when to re-register.

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

No comments were filed in response to the IRFA directly. However, in response to the *DNC NPRM*, some commenters raised concerns about the impact of the Commission's proposed rule changes on small businesses. The National Association of Realtors (NAR) argued that requiring telemarketers to honor registrations indefinitely will result in increased economic burdens for small businesses. The American Teleservices Association contended that the rule change will lead to a larger Registry, and consequently larger Registry file sizes, which will adversely impact small businesses due to their limited resources. Others argued that the rule change would have a negligible effect on small businesses. NASUCA and the Nebraska Public Services Commission pointed out, for example, that small businesses will be required to access the Registry and avoid calling numbers in the Registry just as they do today.

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

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Small Business Act, 15 U.S.C. 632 (1996).

The modifications to the regulations adopted in this item apply to a wide range of entities, including all entities that use the telephone to advertise. That is, the rule changes affect the myriad of businesses throughout the nation that telemarket and, therefore, must access the National Registry to avoid calling registered numbers, including the following:

Interexchange Carriers. Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to the FCC's *Telephone Trends Report* data, 281 carriers reported that their primary telecommunications service activity was the provision of interexchange services. Of these 281 carriers, an estimated 254 have 1,500 or fewer employees, and 27 have more than 1,500 employees. Consequently, the Commission estimates that a majority of interexchange carriers may be affected by the rules.

Incumbent Local Exchange Carriers. Neither the Commission nor the SBA has developed a small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to the FCC's *Telephone Trends Report* data, 1,310 incumbent local exchange carriers

reported that they were engaged in the provision of local exchange services. Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees. Consequently, the Commission estimates that the majority of providers of local exchange service are small entities that may be affected by the rules and policies adopted herein.

Wireless Service Providers. In November of 2007, the SBA developed a small business size standard for small businesses in the category ''Wireless Telecommunications Carriers (except satellite).'' 13 CFR 121.201, NAICS code 517210. Under that SBA category, a business is small if it has 1,500 or fewer employees. Thus, under this category and the associated small business size standard, the great majority of firms can be considered small. For a census category that existed for a prior version of the NAICS codes, namely ''Cellular and Other Wireless Telecommunications,'' Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the majority of firms can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The *DNC Report and Order* amends the Commission's rules to require sellers and/or telemarketers to honor registrations on the National Do-Not-Call Registry until the registration is either cancelled by the consumer or the number is removed by the database administrator. This rule change will affect compliance requirements, as numbers currently registered will not be automatically removed from the Registry five years after they were registered. However, the Commission expects that sellers and/or telemarketers will continue to access the Registry and avoid calling numbers on the Registry as they do today. There are no new or additional reporting or recordkeeping requirements associated with the amended rules.

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

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. *See* 5 U.S.C. 603(c).

In the *DNC Report and Order,* the Commission amends its rules to require sellers and/or telemarketers to honor national do-not-call registrations indefinitely. The alternative would be to not modify the rules and leave the period for honoring registrations at 5 years for sellers and/or telemarketers subject to our rules. This would result in the Commission's rules being inconsistent with FTC policy and Congress's mandate in the DNC Improvement Act to not remove numbers after 5 years.

The Commission considered the burdens to small businesses of having to comply with these amended rules. The record revealed that some commenters suspected that the Commission's proposed rule change would negatively impact small businesses. They argued that small businesses would have to purchase additional storage space and experience lengthier download times to accommodate the increased size of the Registry. Commenters also feared that numbers that had been disconnected or reassigned would not be purged from the Registry in a timely manner. The Commission considered these concerns and concluded that the rule change will not be overly burdensome for small entities. Such entities will be required to continue to access the Registry as they do today. Small businesses can obtain the data on an area-code-by-area-code basis and need only purchase those area codes in which they intend to telemarket. In addition, the Commission found that the rule change's benefits to the public and to consumer privacy interests outweighed the potential negative effect on small businesses of eliminating the 5-year registration period. Consumers will no longer be required to re-register every 5 years or need to remember when and how to re-register. In response to concerns about the accuracy of the Registry, the Commission notes that Congress requires the FTC to check the database and remove disconnected and reassigned numbers. In addition, the Commission encourages LECs to provide information to the database administrator timely and accurately to enhance the FTC's ability to remove disconnected and reassigned numbers, thereby improving the overall accuracy of the Registry. The Commission also encourages parties to submit additional proposals directly to the FTC for consideration.

Congressional Review Act

The Commission will send a copy of the *DNC Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Pursuant to sections 1–4, 227 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 227 and 303(r); and § 64.1200 of the Commission's rules, 47 CFR 64.1200, the *DNC Report and Order* in CG Docket No. 02–278 is adopted, and Part 64 of the Commission's rules, 47 CFR 64.1200, is amended.

The *DNC Report and Order* shall be effective July 14, 2008, except § 64.1200(c)(2) of the Commission's rules, which contains information collection requirements that are not effective until approval by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of the amended rule.

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

List of Subjects in 47 CFR Part 64

Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

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

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254 (k) unless otherwise noted.

■ 2. Section 64.1200 is amended by revising paragraph (c)(2) introductory text to read as follows:

§ 64.1200 Delivery restrictions.

* * * * *

(c) * * *

(2) A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government. Such do-not-call registrations must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator. Any person or entity making telephone solicitations (or on whose behalf telephone solicitations are made) will not be liable for violating this requirement if:

* * * * *

[FR Doc. E8–15994 Filed 7–11–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–25; FCC 07–204]

Creation of a Low Power Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the revised information collections associated with the *Creation of a Low Power Radio Service.* This notice is consistent and satisfies the Ordering Clause of the Report and Order published at 73 FR 3202–02, on January 17, 2008, which stated that changes to FCC Form 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License and FCC Form 315, Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, OMB Control Number 3060–0031, will become effective 60 days after a notice is published in the **Federal Register** announcing OMB approval of the forms.

DATES: FCC Forms 314 and 315 are effective September 12, 2008.

FOR FURTHER INFORMATION CONTACT: Peter Doyle or Kelly Donohue, Audio Division, Media Bureau at (202) 418–2700.

SUPPLEMENTARY INFORMATION: This document announces that, on June 23, 2008, OMB approved, for a period of three years, the revised information collection requirements resulting in changes to FCC Forms 314 and 315 contained in the Commission's Report and Order concerning the Creation of a Low Power Radio Service, FCC 07–204, published at 73 FR 3202–02, January 17, 2008. The OMB Control Number is 3060–0031 for both FCC Forms 314 and 315. The Commission publishes this notice as an announcement of the effective date of the forms and announcement of OMB approval for the information collections. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please write to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number 3060–0031 in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on June 23, 2008, for the revised information collection requirements resulting in changes to FCC Forms 314 and 315. The OMB Control Number assigned to the information collections is 3060–0031. For revisions to Forms 314 and 315 the total annual reporting burden for respondents for these collections of information, including the time for gathering and maintaining the collection of information, is estimated to be: 4,510 respondents, total annual burden hours of 18,790 hours, and $33,989,570 in total annual costs.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–15845 Filed 7–11–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 080306389–8810–02]

RIN 0648–AW53

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Allowance of New Gear (Haddock Rope Trawl, Previously Referred to as the Eliminator Trawl) in Specific Special Management Programs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS approves the use of an additional type of trawl gear known as the ''haddock rope trawl'' (formerly called the ''eliminator trawl'') in the Regular B Days-at-Sea (DAS) Program and the Eastern U.S./Canada Haddock Special Access Program (SAP). Vessels fishing in the Regular B DAS Program or the Eastern U.S./Canada Haddock SAP must use approved trawl gear in order to reduce the catch of Northeast (NE) multispecies (groundfish) stocks of concern. The NE Regional Administrator, NMFS, may approve additional gears for use in these programs if research demonstrates that the gear meets specific standards for the reduction of catch of stocks of concern. The intent of this action is to reduce catch of stocks of concern in the NE multispecies fishery and to provide for the conservation and management of stocks managed by the NE Multispecies Fishery Management Plan (FMP).

DATES: This rule is effective August 13, 2008.

ADDRESSES: Copies of the Technical Report ''Bycatch Reduction in the Directed Haddock Bottom Trawl Fishery'' and a diagram of the haddock rope trawl may be obtained from NMFS at the following address: National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930; telephone (978) 281–9315. NMFS prepared a Final Regulatory Flexiblity Analysis (FRFA), which is contained in

the Classification section of this final rule.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, (978) 281–9347, fax (978) 281–9135, e-mail *Thomas.Warren@NOAA.gov*.

SUPPLEMENTARY INFORMATION: A proposed rule for this action was published on May 20, 2008 (73 FR 29098), with public comment accepted though June 4, 2008. In that proposed rule and other documents relied on for this rule, the haddock rope trawl was referred to as the ''eliminator trawl.'' Based on concerns about possible infringement of a trademark for the term ''eliminator trawl,'' as more fully explained in Comment 1 and the response thereto, below, the newly approved gear is call the haddock rope trawl. A detailed description of the need for, and use of, additional types of trawl gear, and a description of the review process used to evaluate the haddock rope trawl performance, was contained in the preamble of the proposed rule and is not repeated here.

Specific gear standard requirements that must be used to evaluate additional gear proposed for use in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP were implemented through proposed and final rulemaking in 2007 (72 FR 72965). The 2007 gear standards regulation specified that, to be approved, new gear must first be compared to an appropriately selected control gear. Based on this comparison, new gear can be approved if it meets one of the following two standards: (1) Use of the gear must result in a statistically significant reduction, compared to the control gear, of at least 50 percent (by weight, on a trip-by-trip basis) in catch of each regulated NE multispecies stock of concern, or other non-groundfish stocks that are overfished or subject to overfishing identified by the New England Fishery Management Council (Council); or (2) the use of the gear must result in a catch of each regulated NE multispecies stock of concern, or other non-groundfish stocks that are overfished or subject to overfishing identified by the Council, that is less than 5 percent of the total catch of regulated groundfish (by weight, on a trip-by-trip basis). Neither of these requirements apply to regulated species identified by the Council as not being subject to gear performance standards. Because many species in the fishery are caught together, and the dynamic nature of the status of stocks, the performance standard must have a reasonable amount of flexibility in order to be practical. The Council identified that the gear performance standards do not apply to haddock, pollock, and redfish. Haddock, pollock, and redfish are target stocks for which no reductions in fishing mortality are required.

One of these standards must be met in a completed experiment, where comparisons of new gear are made to an appropriately selected control gear that has been reviewed according to the standards established by the Council's research policy, before the gear can be considered and approved by the Regional Administrator. In addition, a request for approval of the use of additional gear in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP must be made by either the Council or the Council's Executive Committee.

On February 19, 2008, the Council sent the Regional Administrator a letter requesting approval of this gear. Based upon the final report, ''Bycatch Reduction in the Directed Haddock Bottom Trawl Fishery,'' and the Council's letter, NMFS is approving the haddock rope trawl. The pertinent information indicates that the catch of each NE multispecies species stock of concern, as well as other species, declined by more than 50 percent with use of the haddock rope trawl, which complies with the first standard for approval of additional gear. The haddock rope trawl net specifications were derived from input from the individuals involved in the haddock rope trawl research and NMFS gear experts, as well as comments received from individuals during the comment period on the proposed rule. Approval of the haddock rope trawl will allow trawl vessels fishing in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP a choice of whether to use the haddock separator trawl or the haddock rope trawl. The size of the haddock rope trawl specified in this final rule is appropriate for fishing vessels with engines of at least 600 horsepower. The results of the experiment could not be used to extrapolate to smaller scale haddock rope trawl gear used by smaller horsepower vessels.

Comments and Responses

Eight comments were received on the proposed rule from the Council, an anonymous citizen, members of a research/educational institution, the State of Maine Division of Marine Resources, an environmental organization, a fishing industry association, and a fishing gear manufacturer.

Comment 1: One commenter claimed that the trawl manufacturer that made the prototype net used in the research, Superior Trawl, has a trademark on the name ''eliminator trawl,'' and was concerned that referring to the net as the eliminator trawl in this final rule would preclude other net manufacturers from making and/or selling the trawl and, therefore, create a situation where only one company could legally manufacture or sell the specified net.

Response: NMFS acknowledges this comment and replaces all references to the ''eliminator trawl'' made in the proposed rule with ''haddock rope trawl'' in this final rule. The haddock rope trawl prototype was built by Superior Trawl of Rhode Island, based on collaborative research. At the time the proposed rule was published, NMFS was unaware that Superior Trawl had claimed a right to the name ''eliminator trawl.'' A representative of Superior Trawl indicated to NMFS that they intend to file a trademark application with the U.S. Patent and Trademark Office and have begun using the letters ''TM'' in association with the eliminator trawl on their website. To avoid any possible violations of trademark laws and any confusion in the fishing industry by the use of the term ''eliminator trawl,'' NMFS renamed the gear ''haddock rope trawl.''

Comment 2: Six comments strongly supported approval of the haddock rope trawl for various reasons, including the potential of the gear to enhance economic benefits by allowing access to haddock, the reduction of cod bycatch, and encouragement of the use of innovative gear technology. One commenter noted that this net was the grand prize winner in the 2007 International Smart Gear Competition, and has been successfully tested in the United Kingdom.

Response: NMFS agrees that approval of the haddock rope trawl will have positive impacts on the fishery, including access to haddock, resulting in increased economic benefits, additional flexibility for vessels participating in the special management programs, and further incentive to develop and use new gear technology.

Comment 3: One commenter was concerned that various required elements of the haddock rope trawl would preclude modification of the net so that it could be used by small vessels. Specifically, the commenter believed that the key specification required for proper functioning of the net is the large-mesh (7.9–ft (240–cm)) elements of the net, and that the fishing circle requirement, kite panel requirement, small mesh requirements, and rockhopper specifications would not

improve effectiveness, and were not adaptable to smaller vessels.

Response: NMFS disagrees that the haddock rope trawl should be specified in a manner that removes important elements of the trawl design in order to be adaptable to smaller vessels. The haddock rope trawl as specified in the proposed rule is essentially a description of the net used in the research summarized in the paper ''Bycatch Reduction in the Directed Haddock Bottom Trawl Fishery.'' The research investigated the catch by a specific size and configuration of trawl gear, and the conclusions of that research pertain only to trawl nets of similar configuration. The modifications suggested by the commenter would be substantial, and the conclusions regarding the effectiveness of the net cannot be extrapolated to a trawl configuration that is so different from that documented by the researchers. The research paper stated that the two vessels involved in the research both had engines of 675 HP, and indicated that the results of the experiment cannot be used to extrapolate to smaller scale haddock rope trawl gear that could be readily used by smaller horsepower vessels. The proposed rule noted that the size of the haddock rope trawl specified would be appropriate for fishing vessels with engines of at least 600 HP. Although NMFS supports the objective of approving a net of similar design as the haddock rope trawl for use by smaller vessels, such a net is outside the scope of this final rule. Research is currently underway testing a smaller, modified version of the haddock rope trawl, and at-sea observations indicate that this smaller net may also be effective at reducing bycatch.

Comment 4: One commenter requested clarification of whether the rockhopper sizes specified in the regulations were maximum or minimum sizes, and what ''graduated'' rockhoppers meant.

Response: The 12- to 16–inch (30- to 40–cm) rockhopper size specifications are minimums, and the small discs (3.5–inch (8.8–cm)) are maximum size specifications. The large spaces between the rockhoppers and the small discs located between the rockhoppers are intended to allow flatfish and skates to escape more easily. The different sized rockhoppers must be arranged along the sweep in size order (graduated), with the largest rockhopper disc in the center of the sweep and the smaller rockhopper at the wing ends. This final rule incorporates these clarifications to the rockhopper specifications.

Comment 5: One commenter claimed that some elements of the haddock rope trawl requirements are difficult or impossible to enforce.

Response: NMFS agrees that it may be difficult for law enforcement personnel to verify that a particular trawl net is consistent with the haddock rope trawl specifications due to their complexity, and the challenge of manipulating and measuring large nets while at sea. However, enforcement officers could verify the specifications of a net on shore, or under certain conditions at sea and determine whether the net is in compliance with the regulations. Because the haddock rope trawl is limited to two special management programs, and because vessels must declare into these programs via the Vessel Monitoring System prior to leaving the dock, enforcement personnel will be able to determine which vessels are subject to the haddock rope trawl regulations.

Comment 6: One commenter suggested that the minimum mesh size requirements be expressed as averages over multiple meshes, instead of being specified on an individual mesh basis, and suggested that the number of meshes included in the requirement should depend on the size of the mesh. Further, the commenter suggested that the mesh size requirements include a 5–percent tolerance. The suggestions are based on the concern that, with time and usage, mesh may shrink, stretch, or distort, increasing the likelihood that, when measured, the size of an individual mesh will be inconsistent with the required mesh size and, therefore, making compliance with the mesh size regulations difficult for fishermen.

Response: NMFS agrees that the commenter has a valid concern, but disagrees that a substantive change to the regulations as proposed are necessary. The specification of trawl mesh sizes should not be confused with the method of measuring and verifying such specifications. These are two different issues. The current regulations under § 648.80(f)(2) specify methods to measure mesh over multiple meshes, which should address the commenter's concerns. These regulations state that mesh sizes are the average of 20 consecutive meshes, measured along the long axis of the net. In order to address this issue, the regulations for the haddock rope trawl specified in this final rule will reference the regulations that specify the methods to measure mesh (§ 648.80(f)(2)), in order to make it clear that, when possible, the mesh should be measured over 20 meshes. A single standard of 20 measures is more simple than enumerating different number of meshes to count depending upon mesh size. NMFS disagrees that the regulation should specify a 5–percent tolerance provision to address the potential variability of mesh sizes for the reason stated above. Procedures utilized by NMFS and the U.S. Coast Guard allow discretion to enforce fishery regulations in a fair, reasonable, and practical manner.

Comment 7: One commenter noted that there is no justification for the size specification of 1.0 square m for each of the three kite panels included in the haddock rope trawl specification, because the size kite panel utilized in the experiment was more precisely 0.9 square m. The commenter further suggested alternative language to require that the total kite panel surface area must be 2.7 square m (i.e., remove the requirement for three kite panels and state a total surface area requirement instead).

Response: Although the research that tested the haddock rope trawl utilized three kite panels, and noted a surface area of 1 square m for each (and the proposed rule reflected this specification), because the commenter is one of the principal investigators of the research and the proposed modification is relatively minor, NMFS agrees to the commenter's suggestion. Implementing a 2.7 square m standard for total kite panel surface area instead of requiring three kite panels will allow additional flexibility for vessel owners to utilize one or multiple kite panels to maximize headrope height, and will more precisely reflect the kite panel surface area of 2.7 square m utilized in the research, without compromising the benefits of the gear. Accordingly, this change was made in this final rule.

Changes From the Proposed Rule

NMFS has made several changes to the proposed rule, including changes as a result of public comment. These changes are listed below in the order that they appear in the regulations.

In § 648.2, the definition of ''stretched mesh'' has been revised to change the name of the trawl from ''eliminator trawl'' to ''haddock rope trawl.''

In § 648.14, paragraph (c)(89) has been added to prohibit fishing with or possession of a haddock rope trawl that does not comply with the net specifications (if electing to fish with a haddock rope trawl).

In § 648.85, paragraph (b)(6)(iv)(J)(*1*) has been revised to change the name of the trawl from eliminator trawl to haddock rope trawl.

In § 648.85, paragraph (b)(6)(iv)(J)(*3*), the introductory text has been revised to change the name of the trawl from eliminator trawl to haddock rope trawl,

and to cross reference the regulations under § 648.80(f)(2) that specify how trawl mesh is measured.

In § 648.85, paragraph (b)(6)(iv)(J)(*3*)(*ii*) is revised to further describe that large mesh is measured knot to knot.

In § 648.85, paragraph (b)(6)(iv)(J)(*3*)(*v*) is revised to state that the total surface area of the kite panel(s) must be 2.7 square m, rather than requiring three 1.0 square m kites.

In § 648.85, paragraph (b)(6)(iv)(J)(*3*)(*vi*) is revised to clarify the meaning of ''graduated'' and state that the large rockhopper sizes are minimum specifications.

Classification

NMFS has determined that this final rule is consistent with the FMP and is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule is published pursuant to 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA, which incorporates the IRFA and this final rule, and describes the economic impact that this action may have on small entities. Four comments on the economic impacts of the haddock rope trawl approval were received.

Allowing the use of the haddock rope trawl in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP would provide the fishing industry more flexibility in the use of trawl gear that minimizes catch of stocks of concern by providing them with a choice of whether to use the haddock separator trawl or the haddock rope trawl. Vessels fishing under a Regular B DAS in these programs must comply with restrictive landing limits of various species. The choice of two nets would enable a vessel owner to decide which net is the most cost effective means of targeting haddock and complying with the landing restrictions. A description of the objectives and legal basis for the proposed haddock rope trawl is contained in the **SUMMARY** of this final rule.

Under the Small Business Administration (SBA) size standards for small fishing entities ($ 4.0 million in annual gross sales), all permitted and participating vessels in the groundfish fishery are considered to be small entities and, therefore, there are no disproportionate impacts between large and small entities. Gross sales by any one entity (vessel) do not exceed this threshold. The maximum number of small entities that could be affected by the approval of the haddock rope trawl are approximately 1,200 vessels; i.e., those issued limited access NE multispecies DAS permits that have an allocation of Category A or B DAS. Realistically, however, the number of vessels that choose to fish in either of these programs, and that would be subject to the associated restrictions, including the use of either the haddock separator trawl or the haddock rope trawl, would be substantially smaller. For example, in fishing year (FY) 2005, 132 vessels fished in either the Regular B DAS Program or the Eastern U.S./Canada Haddock SAP. In FY 2006, there were only 45 vessels that fished in either program. Although it is possible that, under future circumstances, more vessels may elect to participate in these programs, a large increase in the numbers of participants is unlikely. Furthermore, some participants in the Regular B DAS Program and in the SAP may not have sufficient engine horsepower to use the haddock rope trawl, and, therefore, may not be able to use the trawl.

Based on information from a commercial net manufacturer, the cost of purchasing a new haddock rope trawl net is approximately $ 13,000. A squid trawl net could be modified into a haddock rope trawl for approximately $ 1,000, by replacing the last belly portion of the net and putting in a rockhopper sweep. If 130 vessels fished in either of the special management programs that require the use of a specialized trawl, and the vessel operators decided to purchase the haddock rope trawl net, the total cost to the industry would be approximately $ 1,690,000. It is likely that many vessels that have fished in these programs in the past using a separator trawl may choose not to purchase a haddock rope trawl. Vessels choosing to use the haddock rope trawl would incur the purchase cost and other adjustment costs. The decision to do so, and to thereby fish in a special management program offering additional revenue opportunities is a voluntary decision based on the individual vessel's assessment of profitability. Individual businesses (vessel owners) can make the decision to incur the costs of using a haddock rope trawl based upon the costs and benefits to their business.

Because the haddock rope trawl is the only gear that has been vetted through the review process and recommended by the Council, there were only two alternatives under consideration, and NMFS was left with only two options: to approve the haddock rope trawl or continue with the status quo (the no action alternative). NMFS selected approval of the haddock rope trawl because it determined that approval of the haddock rope trawl provides more flexibility to the fishing industry when compared to the no action alternative, and provides increased opportunity for vessels to minimize catch of stocks of concern while generating revenue from special management programs.

Three commenters commented specifically on the economic impacts of approval of the haddock rope trawl. One commenter commented not directly on the economic impacts, but on the fact that the haddock rope trawl, as specified, would not be appropriate for smaller vessels. One commenter supported approval of the haddock rope trawl gear due to its potential to facilitate access to the haddock resource, and estimated increased revenues of $30 million. A second commenter stated that approval of the net would help with vessels' economic survival. A third commenter was concerned about the economic impact on trawl gear manufacturers because he claimed that the name ''eliminator trawl'' is a registered trademark of a particular trawl manufacturer. The commenter was worried that the name eliminator trawl would be legally reserved for the exclusive use of the one manufacturer that had registered eliminator trawl as its trademark, and therefore other companies that did not have a right to use the name eliminator trawl may be precluded from marketing and selling the net, or would have to avoid the use of the name eliminator trawl. Either of these situations could negatively impact other sellers of the eliminator trawl. Because of the potential for confusion in the fishing industry or infringement on the trademark by sellers, NMFS renamed the trawl specified in the regulations in order to preclude potential impacts on these businesses (which includes small entities).

A fourth commenter noted that the haddock rope trawl, as specified, would not be appropriate for smaller vessels, with the unstated implication that the net approval would not provide any benefits to small vessels. This rule does not intentionally preclude the use of the gear based on vessel size or horsepower, but NMFS realizes that an unavoidable consequence of this rule may be that smaller vessels or vessels with less than 600 HP may not be able to use this gear. However, given the nature of this rule, there is no other alternative. The process of conducting gear research and reviewing such research is time-consuming and costly, and the standards for approval must be met. The research paper that documented the effectiveness of the haddock rope trawl

indicated that the results of the experiment could not be used to extrapolate to smaller scale haddock rope trawl gear that could be readily used by smaller horsepower vessels. The haddock rope trawl is the only gear that has been vetted through the review process and recommended by the Council. Although NMFS supports the objective of approving a net of similar design as the haddock rope trawl for use by smaller vessels, such a net is outside the scope of this final rule. Additional research is being proposed by two of the co-authors of ''Bycatch Reduction in the Directed Haddock Bottom Trawl Fishery'' that will investigate the use of a haddock rope trawl net designed for smaller vessels with 250 to 550 HP engines. Performance standards, rather than design standards, are utilized for the evaluation of new trawl gear, in order to provide conservation engineers flexibility in design and a meaningful standard for the achievement of the goal of bycatch reduction. The performance standards under § 648.85(b)(6)(iv)(J)(*2*) were developed for the specific purpose of evaluating additional fishing gear for these special management programs. The net effect of this gear not being available to smaller size or horsepower vessels is the same as the status quo.

Any economic impact of this rule will be based upon a vessel owner's decision to purchase and use the haddock rope trawl, based upon their assessment of profitability. This action does not modify any collection of information, reporting, or recordkeeping requirements. The haddock rope trawl net does not duplicate, overlap, or conflict with any other Federal rules.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of limited access DAS permits for the NE multispecies fishery. The guide and this final rule will be posted on the NMFS NE Regional Office Web site at *http://www.nero.noaa.gov* and will also be available upon request.

Dated: July 8, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.2, new definitions for ''fishing circle,'' ''stretched mesh,'' and ''sweep'' are added in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Fishing circle, with respect to the NE multispecies limited access fishery, means the calculated circumference of a bottom trawl based on the number of meshes and stretched mesh length at the narrow, aft end of the square of the net.

* * * * *

Stretched mesh, with respect to the NE multispecies haddock rope trawl, means mesh that is pulled so that slack in the mesh is eliminated and the mesh opening is closed.

* * * * *

Sweep, with respect to the NE multispecies limited access fishery, means the part of a bottom trawl that, during normal use, is in contact with the sea floor along the outer edges of the lower webbing of the net.

* * * * *

■ 3. In § 648.14, paragraphs (a)(132) and (c)(81) are revised and paragraph (c)(89) is added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(132) If fishing with trawl gear under a NE multispecies DAS in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl or a flounder trawl net, as specified in § 648.85(a)(3)(iii), unless otherwise allowed under the Eastern U.S./Canada Haddock SAP rules in § 648.85(b)(8)(v)(E).

* * * * *

(c) * * *

(81) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to use a haddock separator trawl as described under § 648.85(a)(3)(iii)(A), or other approved gear as described under § 648.85(b)(6)(iv)(J).

* * * * *

(89) If possessing a haddock rope trawl, either at sea or elsewhere, as allowed under § 648.85(b)(6)(iv)(J)(*1*) or (b)(8)(v)(E)(*1*), fail to comply with the net specifications under § 648.85(b)(6)(iv)(J)(*3*).

* * * * *

■ 4. In § 648.85, paragraphs (b)(6)(iv)(J)(*1*) and (b)(8)(v)(E) introductory heading and (b)(8)(v)(E)(*1*) are revised, and paragraph (b)(6)(iv)(J)(*3*) is added to read as follows:

§ 648.85 Special management programs.

* * * * *

(b) * * *

(6) * * *

(iv) * * *

(J) * * *

(*1*) Vessels fishing with trawl gear in the Regular B DAS Program must use the haddock separator trawl or haddock rope trawl net, as described under paragraphs (a)(3)(iii)(A) and (b)(6)(iv)(J)(*3*) of this section, respectively, or other type of gear if approved as described under this paragraph (b)(6)(iv)(J). Other gear may be on board the vessel, provided it is stowed when the vessel is fishing under the Regular B DAS Program.

* * * * *

(*3*) *Haddock Rope Trawl*. The haddock rope trawl is a four-seam bottom groundfish trawl designed to reduce the bycatch of cod while retaining or increasing the catch of haddock, when compared to traditional groundfish trawls. A haddock rope trawl must be constructed in accordance with the standards described and referenced in this paragraph § 648.85(b)(6)(iv)(J)(*3*). The mesh size of a particular section of the haddock rope trawl is measured in accordance with § 648.80(f)(2), unless insufficient numbers of mesh exist, in which case the maximum total number of meshes in the section will be measured (between 2 and 20 meshes).

(*i*) The net must be constructed with four seams (i.e., a net with a top and bottom panel and two side panels), and include at least the following net sections as depicted in Figure 1 of this part ANomenclature for 4–seam haddock rope trawl@ (this figure is also available from the Administrator, Northeast Region): Top jib, bottom jib, jib side panels (x 2), top wing, bottom wing, wing side panels (x 2), square, bunt, square side panels (x 2), first top belly, first bottom belly, first belly side panels (x 2), second top belly, second bottom belly, second belly side panels (x 2), and third bottom belly.

(*ii*) The first bottom belly, bunt, the top and bottom wings, and the top and bottom jibs, jib side panels, and wing side panels (the first bottom belly and all portions of the net in front of the first

bottom belly, with the exception of the square and the square side panels) must be at least two meshes long in the fore and aft direction. For these net sections, the stretched length of any single mesh must be at least 7.9 ft (240 cm), measured in a straight line from knot to knot.

(*iii*) Mesh size in all other sections must be consistent with mesh size requirements specified under § 648.80 and meet the following minimum specifications: Each mesh in the square, square side panels, and second bottom belly must be 31.5 inches (80 cm); each mesh in the first and second top belly, the first belly side panels, and the third bottom belly must be at least 7.9 inches (20 cm); and 6 inches (15.24 cm) or larger in sections following the second top belly and third bottom belly sections, all the way to the codend. The mesh size requirements of the top sections apply to the side panel sections.

(*iv*) The trawl must have a fishing circle of at least 398 ft (121.4 m). This number is calculated by separately counting the number of meshes for each section of the net at the wide, fore end of the first bottom belly, and then calculating a stretched length as follows: For each section of the net (first bottom belly, two belly side panels and first top belly) multiply the number of meshes times the length of each stretched mesh to get the stretched mesh length for that section, and then add the sections together. For example, if the wide, fore end of the bottom belly of the haddock rope trawl is 22 meshes (and the mesh is at least 7.9 ft (240 cm)), the stretched mesh length for that section of the net is derived by multiplying 22 times 7.9 ft (240 cm) and equals 173.2 ft (52.8 m). The top and sides (x 2) of the net at this point in the trawl are 343 meshes (221 + 61 + 61, respectively) (each 7.9 inches (20 cm)), which equals 225.1 ft (68.6 m) stretched length. The stretched lengths for the different sections of mesh are added together (173.2 ft + 225.1 ft (52.8 + 68.6 m)) and result in the length of the fishing circle, in this case 398.3 ft (121.4 m).

(*v*) The trawl must have a single or multiple kite panels with a total surface area of at least 29.1 sq. ft. (2.7 sq. m) on the forward end of the square to help maximize headrope height, for the purpose of capturing rising fish. A kite panel is a flat structure, usually semi-flexible used to modify the shape of trawl and mesh openings by providing lift when a trawl is moving through the water.

(*vi*) The sweep must include rockhoppers of various sizes, which are arranged along the sweep in size order, graduated from 16–inch (40–cm) diameter in the sweep center down to 12–inch (30–cm) diameter at the wing ends. There must be six or fewer 12- to16–inch (30- to 40–cm) rockhopper discs over any 10–ft (3.0–m) length of the sweep. The 12- to16- inch (30- to 40–cm) discs (minimum size) must be spaced evenly, with one disc placed approximately every 2 ft (60 cm) along the sweep. The 12- to 16–inch (30- to 40–cm) discs must be separated by smaller discs, no larger than 3.5 inches (8.8 cm) in diameter.

* * * * *

(8) * * *

(v) * * *

(E) *Gear requirement*—(*1*) A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP must use the haddock separator trawl or haddock rope trawl net, as described under paragraphs (a)(3)(iii)(A) and (b)(6)(iv)(J)(*3*) of this section, respectively, or other type of gear, if approved as described under this paragraph (b)(8)(v)(E). No other type of fishing gear may be on the vessel when on a trip in the Eastern U.S./Canada Haddock SAP, with the exception of a flounder net, as described in paragraph (a)(3)(iii) of this section, provided that the flounder net is stowed in accordance with § 648.23(b).

* * * * *

■ 5. In part 648, add Figure 1 to read as follows:

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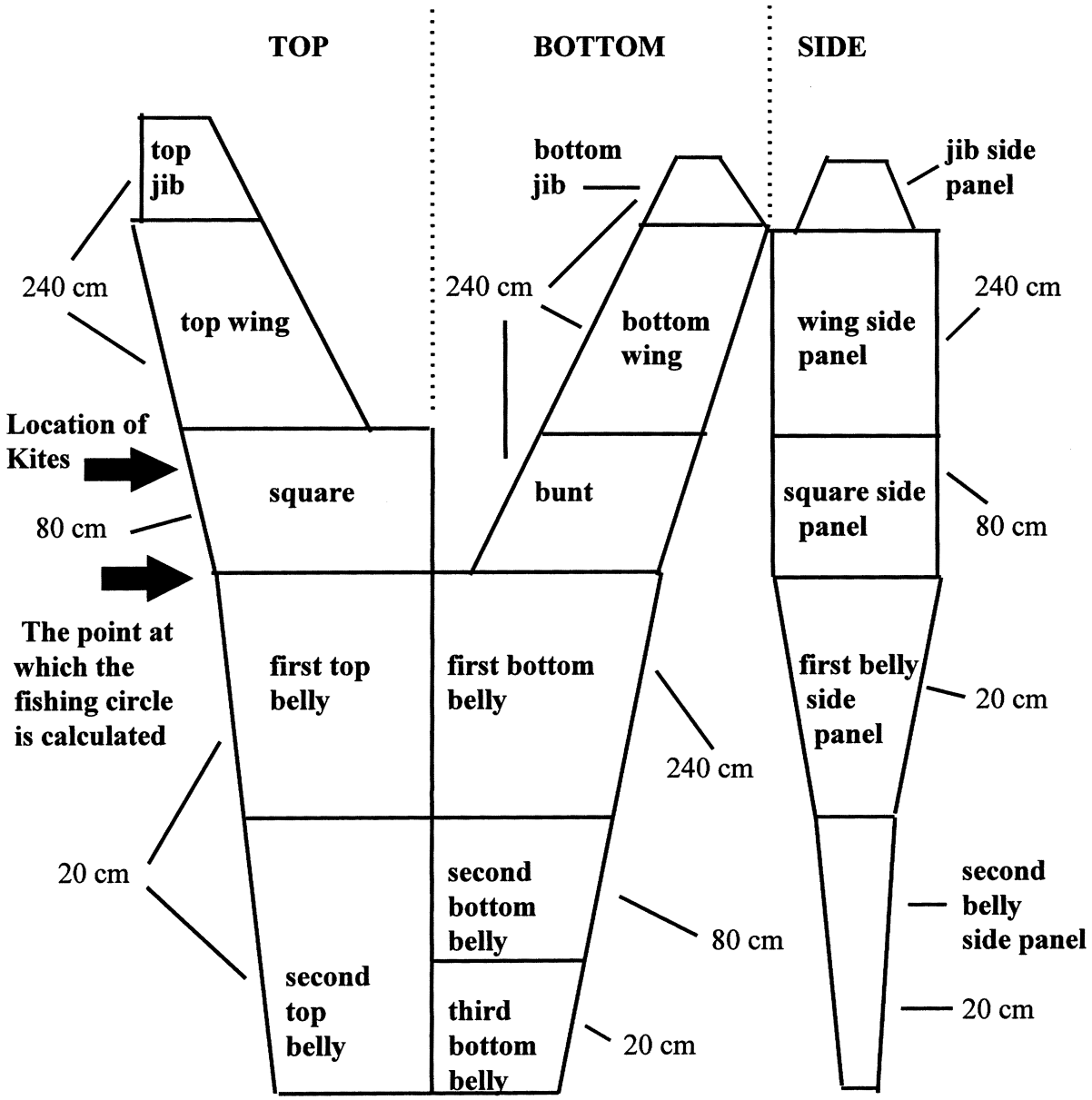
Figure 1 to Part 648



Nomenclature for 4 Seam, Haddock Rope Trawl and Minimum Mesh Size by Section

20 cm = 7.9 inches;
80 cm = 31.5 inches;
240 cm = 7.9 ft

[FR Doc. E8–15950 Filed 7–11–08; 8:45 am]
BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XJ02

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve of groundfish to the Greenland turbot initial total allowable catch (ITAC) in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the fishery to continue operating. It is intended to promote the goals and objectives of the fishery management plan for the BSAI.

DATES: Effective July 11, 2008 through 2400 hrs, Alaska local time, December 31, 2008. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, July 28, 2008.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–XJ02, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*;
- Mail: P.O. Box 21668, Juneau, AK 99802;
- Fax: (907) 586–7557; or
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

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: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 ITAC of Greenland turbot in the Bering Sea subarea of the BSAI was established as 1,488 mt by the 2008 and 2009 harvest specifications for groundfish of the BSAI (73 FR 10160, February 26, 2008). The Regional Administrator, Alaska Region, NMFS, has determined that the ITAC for Greenland turbot in the Bering Sea subarea of the BSAI needs to be supplemented from the non-specified reserve in order to continue operations.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions 75 mt from the non-specified reserve of groundfish to the Greenland turbot ITAC in the Bering Sea subarea of the BSAI. This apportionment is consistent with § 679.20(b)(1)(i) and does not result in overfishing of a target species because the revised ITAC is equal to or less than the specifications of the acceptable biological catch in the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008).

The harvest specification for Greenland turbot included in the harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008) is revised as follows: 1,563 mt to the 2008 ITAC of Greenland turbot in the Bering Sea subarea of the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 50 CFR 679.20(b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the non-specified reserves of groundfish to the Greenland turbot fishery in the Bering Sea subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 8, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until July 28, 2008.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: July 9, 2008.

Emily H. Menashes

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–15987 Filed 7–11–08; 8:45 am]

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Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Docket Number AMS–TM–07–0124; TM–07–12PR]

RIN 0581–AC76

National Organic Program (NOP); Sunset Review (2008)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) regulations to reflect recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on November 30, 2007, and May 22, 2008. The recommendations addressed in this proposed rule pertain to the continued exemption (use) and prohibition of 12 substances in organic production and handling. Consistent with the recommendations from the NOSB, this proposed rule would renew the 11 exemptions and 1 prohibition on the National List (along with any restrictive annotations) and correct the Tartaric acid listings by adding annotations originally recommended to the Secretary on November 1, 1995.

DATES: Comments must be received by August 13, 2008.

ADDRESSES: Interested persons may submit written comments on this proposed rule using the following addresses:

- *Mail:* Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA–AMS–TMP–NOP, 1400 Independence Ave., SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250.
- *Internet: www.regulations.gov*.

Written comments responding to this proposed rule should be identified with the docket number AMS–TM–07–0124. You should clearly indicate your position to continue the allowance or prohibition of the substances identified in this proposed rule and the reasons for your position. You should include relevant information and data to support your position (*e.g.*, scientific, environmental, manufacturing, industry impact information, etc.). You should also supply information on alternative substances or alternative management practices, where applicable, that support a change from the current exemption or prohibition of the substance. Only the supporting material relevant to your position will be considered.

It is our intention to have all comments concerning this proposed rule, including, names and addresses when provided, whether submitted by mail or internet available for viewing on the Regulations.gov (*www.regulations.gov*) Internet site. Comments submitted in response to this proposed rule will also be available for viewing in person at USDA–AMS, Transportation and Marketing Programs, National Organic Program, Room 4008–South Building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday, (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Richard H. Mathews, Chief, Standards Development and Review Branch, *Telephone:* (202) 720–3252; *Fax:* (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

The OFPA, 7 U.S.C. 6501 *et seq.*, authorizes the establishment of the National List of exempted and prohibited substances. The National List identifies synthetic substances (synthetics) that are exempted (allowed) and nonsynthetic substances (nonsynthetics) that are prohibited in organic crop and livestock production. The National List also identifies nonsynthetics and synthetics that are exempted for use in organic handling.

The exemptions and prohibitions granted under the OFPA are required to be reviewed every 5 years by the National Organic Standards Board (NOSB). The Secretary of Agriculture has authority under the OFPA to renew such exemptions and prohibitions. If they are not reviewed by the NOSB within 5 years of their inclusion on the National List and renewed by the Secretary, their authorized use or prohibition expires. This means that synthetic substances Copper sulfate, Ozone gas, Peracetic acid, and EPA List 3 Inerts, currently allowed for use in organic crop production, will no longer be allowed for use after November 3, 2008. Calcium chloride currently prohibited from use in organic crop production, except as a foliar spray to treat a physiological disorder associated with calcium uptake, will be allowed after November 3, 2008. This also means that Agar-agar, Carrageenan, and Tartaric acid, currently allowed for use in organic handling, will be prohibited after November 3, 2008. Finally, Animal enzymes, Calcium sulfate, Glucono delta lactone, and Cellulose, currently allowed for use in organic handling, will no longer be allowed for use after November 4, 2008.

In response to the sunset provisions in the OFPA, the Secretary published an Advanced Notice of Proposed Rulemaking (ANPR) (72 FR 73667) in the **Federal Register** on December 28, 2007, to announce the review of 11 exemptions and 1 prohibition authorized under the National Organic Program regulations. This ANPR also requested public comment on the continued use or prohibition of such exemptions and prohibition. The public comment period lasted 30 days.

We received 35 comments. Comments were received from producers, handlers, certifying agents, trade associations, organic associations, various industry groups, and a university. We received six comments urging that the current listings remain as they are currently stated. Most commenters provided specific support for substances that they promoted, represented, or relied upon. Specific support was received for the following substances (the number in parenthesis represents the number of specific support comments): Agar-agar (7), animal enzymes (2), calcium chloride (1), calcium sulfate (1), carrageenan (15), cellulose (10), List 3 inert ingredients in passive pheromone dispensers (1), ozone gas (3), and peracetic acid (1). One commenter

stated that they have found the standard of identity for passive pheromone dispenser to be undefined. As a result they requested, if the allowance for List 3 inerts in passive pheromone dispensers is renewed, that the AMS and the NOSB reexamine and clarify the meaning of ''passive pheromone dispensers.'' The AMS is unaware of any problems with passive pheromone dispensers.

Six of the commenters supported relisting DL-Methionine, DL-Methionine-hydroxyl analog, and DL-Methionine-hydroxyl analog calcium (CAS #—59–51–8; 63–68–3; 348–67–4). These substances were added to the National List on November 3, 2003, for use in organic poultry production. Initially these substances carried an expiration date of October 21, 2005. Effective October 22, 2005, the expiration date was amended to October 1, 2008. Because these substances have an expiration date recommended by the NOSB and established by rulemaking, they are not included in this sunset review.

The Methionine Task Force, a commenter to the ANPR, submitted a petition on December 17, 2007, to amend § 205.603(d)(1) by removing the annotation date of October 1, 2008. Rulemaking on this request is handled through a separate rulemaking action.

The NOSB met November 27–30, 2007, in Arlington, VA, where they finalized recommendations to continue the listing of 11 of the 12 substances due to sunset. The NOSB met again May 20–22, 2008, in Baltimore, MD, where they finalized their recommendations to continue the listings for Tartaric acid. The NOSB also recommended correcting the Tartaric acid listings by adding annotations originally recommended to the Secretary on November 1, 1995. Having reviewed the comments received on the ANPR, the NOSB also at the May meeting reaffirmed their recommendations from November 30, 2007. Both meetings were open to the public and additional comments were received during the meetings.

As a result of the November 2007 and May 2008 NOSB meetings, and in consideration of the ANPR comments, the NOSB recommended that the Secretary renew the 11 exemptions and 1 prohibition on the National List (along with any restrictive annotations) and correct the Tartaric acid listings by adding annotations originally recommended to the Secretary on November 1, 1995. These recommendations are limited to the prohibition and exemptions originally included on the National List on November 3 and 4, 2003. The Secretary is engaging in this proposed rulemaking to reflect the recommendations of the NOSB, from November 2007 and May 2008, and to request public comment.

Under the authority of the OFPA, as amended, (7 U.S.C. 6501 *et seq.*), the National List can be amended by the Secretary based on proposed amendments developed by the NOSB. Since established, the National List has been amended nine times, October 31, 2003 (68 FR 61987), November 3, 2003 (68 FR 62215), October 21, 2005 (70 FR 61217), June 7, 2006 (71 FR 32803), September 11, 2006 (71 FR 53299), June, 27, 2007 (72 FR 35137), October 16, 2007 (72 FR 58469), December 10, 2007 (72 FR 69569), and December 12, 2007 (72 FR 70479).

II. Overview of Proposed Amendments

From November 27, 2007, through May 22, 2008, the NOSB reviewed 11 exemptions and 1 prohibition that are authorized on the National List and set to expire on November 3 and 4, 2007. Using the evaluation criteria specified in the ANPR for sunset review, the NOSB reviewed these exemptions and prohibition for continued authorization in organic agricultural production and handling. As a result of the NOSB's review, the NOSB recommended that the Secretary renew the 11 exemptions and 1 prohibition on the National List (along with any restrictive annotations) and correct the Tartaric acid listings by adding annotations originally recommended to the Secretary on November 1, 1995.

With respect to the criteria used to make recommendations regarding the continued authorization of exemptions and prohibitions, that decision making is based on public comments and applicable supporting evidence that expresses a continued need for the use or prohibition of the substance(s).

Concerning criteria used to make recommendations regarding the discontinuation of an authorized exempted synthetic substance or prohibited nonsynthetic substance, that decision making, for the exempted synthetic substance, is based on public comments and applicable supporting evidence that demonstrates the currently authorized exempted substance is: (a) Harmful to human health or the environment, (b) not necessary to the production of the agricultural products because of the availability of wholly nonsynthetic substitute products, or (c) inconsistent with organic farming and handling.

In the case of recommendations to discontinue prohibitions of nonsynthetic substances, that decision making is based on public comments and applicable supporting evidence demonstrating that the prohibited nonsynthetic substance is no longer harmful to human health or the environment and is consistent and compatible with organic practices.

Renewals

After considering all public comments and supporting evidence, the NOSB determined that the 11 exemptions and 1 prohibition demonstrated a continued need for authorization in organic agricultural production and handling. On May 22, 2008, the NOSB finalized its recommendation on Tartaric acid and reaffirmed its recommendations of November 30, 2007, on the other 11 substances.

In addition to recommending the continued listing of Tartaric acid in paragraphs (a) and (b) of § 205.605, the NOSB recommended that the listings be corrected to include the annotations originally recommended by the NOSB on November 1, 1995. The NOSB recommended that the listing for Tartaric acid at § 205.605(a) be corrected to read, ''Tartaric acid—made from organic grape wine.'' The NOSB recommended that the listing for tartaric acid at § 205.605(b) be corrected to read, ''Tartaric acid—made from malic acid.'' These annotations were inadvertently left out of the rulemaking which added Tartaric acid to the National List on October 31, 2003 (68 FR 61987).

The Agricultural Marketing Service (AMS) has reviewed and concurs with the NOSB recommendations. Accordingly, this proposed rule would continue the 11 exemptions and 1 prohibition in 7 CFR 205.601, 205.602, and 205.605 of the following substances in organic agricultural production and handling and amend the USDA's national regulations (7 CFR part 205) to add annotations to the Tartaric acid listings of § 205.605:

Section 205.601 Synthetic Substances Allowed for Use in Organic Crop Production

(a) As algicide, disinfectants, and sanitizer, including irrigation system cleaning systems.

(3) Copper sulfate—for use as an algicide in aquatic rice systems, is limited to one application per field during any 24-month period. Application rates are limited to those which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.

(5) Ozone gas—for use as an irrigation system cleaner only.

(6) Peracetic acid—for use in disinfecting equipment, seed, and asexually propagated planting material.

(e) As insecticides (including acaricides or mite control).

(3) Copper Sulfate—for use as tadpole shrimp control in aquatic rice production, is limited to one application per field during any 24-month period. Application rates are limited to levels which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.

(i) As plant disease control.

(7) Peracetic acid—for use to control fire blight bacteria.

(m) As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances.

(2) EPA List 3—Inerts of unknown toxicity allowed:

(ii) Inerts used in passive pheromone dispensers.

Section 205.602 Nonsynthetic Substances Prohibited for Use in Organic Crop Production

(c) Calcium chloride, brine process is natural and prohibited for use except as a foliar spray to treat a physiological disorder associated with calcium uptake.

Section 205.605 Nonagricultural (Nonorganic) Substances Allowed as Ingredients in or on Processed Products Labeled as ''Organic'' or ''Made With Organic (Specified Ingredients or Food Group(s))''

(a) *Nonsynthetics allowed:*

Agar-agar.

Animal enzymes—(Rennet—animals derived; Catalase—bovine liver; Animal lipase; Pancreatin; Pepsin; and Trypsin).

Calcium sulfate—mined.

Carrageenan.

Glucono delta-lactone—production by the oxidation of D-glucose with bromine water is prohibited.

Tartaric acid—made from organic grape wine.

(b) *Synthetics allowed:*

Cellulose—for use in regenerative casings, as an anti-caking agent (non-chlorine bleached) and filtering aid.

Tartaric acid—made from malic acid.

Nonrenewals

The NOSB determined that the 11 exemptions and 1 prohibition demonstrated a continued need for authorization. Accordingly there are no nonrenewals.

Technical Correction

This proposed rule would amend § 205.605(a) by changing ''Carageenan'' to ''Carrageenan'' to correct the spelling of this allowed substance.

III. Related Documents

One advanced notice of proposed rulemaking with request for comments was published in **Federal Register** Notice 72 FR 73667, December 28, 2007, to make the public aware that the allowance of 12 synthetic and non-synthetic substances in organic production and handling will expire, if not reviewed by the NOSB and renewed by the Secretary.

IV. Statutory and Regulatory Authority

The OFPA, as amended (7 U.S.C. 6501 *et seq.*), authorizes the Secretary to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k)(2) and 6518(n) of OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. The National List petition process is implemented under § 205.607 of the NOP regulations. The current petition process (72 FR 2167, January 18, 2007) can be accessed through the NOP Web site at: *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5048809&acct=nopgeninfo*.

A. Executive Order 12866

This action has been determined not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This proposed rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in § 2115(b) of the OFPA (7 U.S.C. 6514(b)). States are also preempted under §§ 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to § 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to § 2120(f) of the OFPA (7 U.S.C. 6519(f)), this proposed rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section

605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, the AMS performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). The AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this proposed rule would not be significant. The effect of this proposed rule would be to allow the continued use of substances currently listed for use in organic agricultural production and handling. The AMS concludes that this action would have minimal economic impact on small agricultural service firms. Accordingly, USDA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000 and small agricultural producers are defined as those having annual receipts of less than $750,000. This proposed rule would have an impact on a substantial number of small entities.

The U.S. organic industry at the end of 2001 included nearly 6,949 certified organic crop and livestock operations. These operations reported certified acreage totaling more than 2.09 million acres of organic farm production. Data on the numbers of certified organic handling operations (any operation that transforms raw product into processed products using organic ingredients) were not available at the time of survey in 2001; but they were estimated to be in the thousands. By the end of 2005, the number of U.S. certified organic crop, livestock, and handling operations totaled about 8,500. Based on 2005 USDA, Economic Research Service, data from USDA-accredited certifying agents, U.S. certified organic acreage increased to 4 million acres.

The U.S. sales of organic food and beverages have grown from $1 billion in 1990 to nearly $17 billion in 2006. The organic industry is viewed as the fastest growing sector of agriculture, representing almost 3 percent of overall food and beverage sales. Since 1990, organic retail sales have historically demonstrated a growth rate between 20 to 24 percent each year, including a 22 percent increase in 2006.

In addition, USDA has 95 accredited certifying agents who provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop*. AMS believes that most of these entities would be considered small entities under the criteria established by the SBA.

D. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by section 350(h) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulations at 5 CFR part 1320.

The AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

E. General Notice of Public Rulemaking

This proposed rule reflects recommendations submitted to the Secretary by the NOSB for the continuation of 11 exemptions and 1 prohibition contained on the National List of Allowed and Prohibited Substances. A 30-day period for interested persons to comment on this rule is provided. Thirty days is deemed appropriate because the expiration of these 12 substances has been widely publicized, their continued use or prohibition is critical to organic production, and this rulemaking should be completed before November 3, 2008.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205, Subpart G is proposed to be amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

§ 205.605 [Amended]

2. Section 205.605(a) is amended by removing ''Carageenan'' and adding ''Carrageenan'' in its place, and by removing ''Tartaric acid'' and adding ''Tartaric acid—made from grape wine'' in its place.

3. Section 205.605(b) is amended by removing ''Tartaric acid'' and adding ''Tartaric acid—made from malic acid'' in its place.

Dated: July 1, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–15389 Filed 7–11–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

7 CFR Part 205

[Docket Number AMS–TM–08–0025; TM–08–05PR]

RIN 0581–AC81

National Organic Program; Proposed Amendment to the National List of Allowed and Prohibited Substances (Livestock)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) to reflect one recommendation submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on May 22, 2008. Consistent with the recommendation from the NOSB, this proposed rule would revise the annotation of one substance on the National List, Methionine, to extend its use in organic poultry production until October 1, 2010.

DATES: Comments must be received by August 13, 2008.

ADDRESSES: Interested persons may submit written comments on this proposed rule using the following addresses:

- *Mail:* Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA–AMS–TMP–NOP, 1400

Independence Ave., SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250.

• *Internet: www.regulations.gov.*

Written comments responding to this proposed rule should be identified with the docket number AMS–TM–08–0025. You should clearly indicate your position on the proposed continued allowance for the use of methionine in poultry production until October 1, 2010. You should clearly indicate the reasons for your position. You should include relevant information and data to support your position (e.g., scientific, environmental, manufacturing, industry impact information, etc.). Finally, you should also supply information on alternative substances or alternative management practices, where applicable, that support a change from the current exemption for methionine. Only the supporting material relevant to your position will be considered.

It is our intention to have all comments concerning this proposed rule, including, names and addresses when provided, whether submitted by mail or internet available for viewing on the Regulations.gov (*www.regulations.gov*) Internet site. Comments submitted in response to this proposed rule will also be available for viewing in person at USDA–AMS, Transportation and Marketing Programs, National Organic Program, Room 4008—South Building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday, (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT:

Richard H. Mathews, Chief, Standards Development and Review Branch, Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established, within the NOP [7 CFR part 205], the National List regulations §§ 205.600 through 205.607. This National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies synthetic, nonsynthetic nonagricultural and nonorganic agricultural substances that may be used in organic handling. The Organic Foods Production Act of 1990 (OFPA), as amended, (7 U.S.C. 6501 *et seq.*), and NOP regulations, in § 205.105, specifically prohibit the use of any synthetic substance for organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural and any nonsynthetic nonagricultural substance used in organic handling be on the National List.

Under the authority of the OFPA, as amended, (7 U.S.C. 6501 *et seq.*), the National List can be amended by the Secretary based on proposed amendments developed by the NOSB. Since established, the National List has been amended nine times, October 31, 2003 (68 FR 61987), November 3, 2003 (68 FR 62215), October 21, 2005 (70 FR 61217), June 7, 2006 (71 FR 32803), September 11, 2006 (71 FR 53299), June, 27, 2007 (72 FR 35137), October 16, 2007 (72 FR 58469), December 10, 2007 (72 FR 69569), and December 12, 2007 (72 FR 70479).

This proposed rule would amend the National List to reflect one recommendation submitted to the Secretary by the NOSB on May 22, 2008. Based on their evaluation of a petition submitted by industry participants, the NOSB recommended that the Secretary amend § 205.603(d)(1) of the National List by revising the annotation of Methionine, a feed additive, to extend its use in organic poultry production until October 1, 2010. The use of Methionine in organic production was evaluated by the NOSB using the evaluation criteria specified in OFPA (7 U.S.C. 6517–6518).

II. Overview of Proposed Amendment

The following provides an overview of the proposed amendment to § 205.603 of the National List:

Section 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production

This proposed rule would amend § 205.603(d)(1) by changing ''2008'' to ''2010''. Section 205.603(d)(1) would now read as follows:

DL—Methionine, DL—Methionine-hydroxyl analog, and DL—Methionine-hydroxyl analog calcium (CAS #–59–51–8; 63–68–3; 348–67–4)—for use only in organic poultry production until October 1, 2010.

Methionine was petitioned for its continued use as a synthetic feed additive in organic poultry operations. Methionine is a colorless or white crystalline powder that is soluble in water. It is classified as an amino acid and considered to be an essential amino acid that is regulated as an animal feed nutritional supplement by the Food and Drug Administration (21 CFR 582.5475).

Methionine was originally included on the National List on October 31, 2003, with an early expiration date of October 21, 2005, (the normal time period for the use of a substance contained in the National List is five years, beginning with the date the substance appears on the National List regulations). Methionine was petitioned by organic livestock producers as a part of the NOSB's 1995 initial review of synthetic amino acids considered for use in organic livestock production. The petitioners asserted that Methionine was a necessary dietary supplement for organic poultry, due to an inadequate supply of organic feeds containing sufficient concentrations of naturally-occurring Methionine. Petitioners suggested synthetic Methionine would be fed as a dietary supplement to organic poultry at levels ranging from 0.3 to 0.5 percent of the animal's total diet. The petitioners also asserted that a prohibition on the use of synthetic Methionine would contribute to nutritional deficiencies in organic poultry thereby jeopardizing the animal's health. After consideration of the justification provided for the inclusion of Methionine and an assessment under the evaluation criteria provided in OFPA (7 U.S.C. 6517–6518), the NOSB considered the use of synthetic Methionine to be consistent with OFPA and recommended its inclusion onto the National List for use in organic poultry production with an early expiration on its use (October 21, 2005). The NOSB recommended an early expiration on the use of Methionine to encourage the organic poultry industry to phase out the use of synthetic Methionine in poultry diets and develop non-synthetic alternatives to its use as a feed additive.

On January 10, 2005, two organic poultry producers petitioned the NOSB to extend the use of Methionine in organic poultry production beyond October 21, 2005. The petition was filed because the organic poultry industry had been unable to develop suitable non-synthetic alternatives for synthetic Methionine in organic poultry diets. The petition sought additional time for development of non-synthetic alternatives. Preliminary research results on nonsynthetic alternatives to synthetic Methionine was provided to the NOSB. Although considered inconclusive, the preliminary results demonstrated that research trials were underway to identify non-synthetic alternatives for phasing out synthetic Methionine in organic poultry diets.

The NOSB, at its February 28–March 3, 2005, meeting in Washington, DC, received and evaluated public comment on the petition to extend the use of Methionine in organic poultry production beyond October 21, 2005. The NOSB concluded that Methionine is consistent with the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA; however, the NOSB maintained that non-synthetic alternatives must be developed during the additional extension on the use of synthetic Methionine in organic poultry diets. Therefore, the NOSB recommended Methionine be added to the National List for use only in organic poultry production until October 1, 2008, so that the organic poultry industry could continue its research to develop non-synthetic alternatives for the use of synthetic Methionine.

In response to the NOSB recommendation of March 3, 2005, § 205.603(d)(1) of the National List was amended (Friday, October 21, 2005, 70 FR 61217) to allow the use of Methionine in organic poultry production until October 1, 2008.

This proposed rule reflects recommendations submitted to the Secretary by the NOSB, at its May 2008 meeting, for extending the use of Methionine in organic poultry production until October 1, 2010. The NOSB evaluated this substance using criteria in the OFPA.

The substance's evaluation was initiated after receipt, by Agricultural Marketing Service (AMS), of a petition filed in December 2007 by the Methionine Task Force (MTF). The MTF requested that § 205.603(d)(1) be amended by removing the annotation date of ''October 8, 2008.'' They also requested that Methionine, in the future, undergo the standard sunset process for review of materials on the National List. The MTF petition addresses the status of the most viable alternatives to synthetic Methionine and agrees that none of the alternatives are currently commercially available.

Additionally, in response to the December 28, 2007, Advanced Notice of Proposed Rulemaking (ANPR) (72 FR 73667) announcing the 2008 sunset review of 12 substances on the National List, AMS received six comments supporting the relisting of DL—Methionine, DL—Methionine-hydroxyl analog, and DL—Methionine-hydroxyl analog calcium (CAS #—59–51–8; 63–68–3; 348–67–4). Because these substances have an expiration date (October 1, 2008) recommended by the NOSB and established by rulemaking, they were not included in the 2008 sunset review. These comments, however, have been considered by the NOSB in developing their recommendation and by the AMS in developing this proposed rule.

The NOSB, at its May 20–22, 2008, meeting in Baltimore, Maryland, received and evaluated public comment on the petition to extend the use of Methionine in organic poultry production beyond October 1, 2008. The NOSB also considered comments received, regarding the need for Methionine, at its November 2007 meeting in Washington, DC.

The NOSB has determined that while wholly natural substitute products exist, they are not presently available in sufficient supplies to meet poultry producers needs. Thus, the NOSB concluded that synthetic Methionine remains a necessary component of a nutritionally adequate diet for organic poultry. Loss of the use of Methionine, at this time, would disrupt the well-established organic poultry market and cause substantial economic harm to organic poultry operations. To prevent disruption to the organic poultry market, while the organic feed sector creates sufficient supplies of wholly natural substitute products, the NOSB has recommended extending the allowed use of Methionine in poultry production until October 1, 2010.

AMS has reviewed and concurs with the NOSB's recommendation.

The organic industry, in 2005, raised approximately 13.8 million birds, had organic poultry products sales of $161 million and organic egg sales of another $161 million. In addition to being sold as whole products, organic eggs and poultry are sold for use in the production of organic processed products such as eggnog, ice cream, soups, broth, noodles, French toast, pancakes, waffles, tartar sauce, hollandaise sauce, mayonnaise, salad dressing, cookies, cakes, cheese cakes, bread, and other bakery goods. Accordingly, it is not just the organic poultry market that would be adversely impacted should producers lose the use of Methionine at this time. Processors would likely be faces with sourcing conventional eggs and poultry, the use of which would disqualify their products from being labeled ''organic.'' Only organic agricultural ingredients are allowed in products labeled as ''organic'' unless the agricultural ingredient has been added to the National List and determined commercially unavailable.

III. Related Documents

Since September 2001 three notices have been published announcing meetings of the NOSB and its planned deliberations on recommendations involving the use of Methionine in organic poultry production. The three notices were published in the **Federal Register** as follows: (1) September 21, 2001 (66 FR 48654), (2) February 11, 2005 (70 FR 7224), and (3) April 4, 2008 (73 FR 18491). Methionine was first proposed for addition to the National List in the **Federal Register** on April 16, 2003 (68 FR 18556). Methionine was added to the National List by final rule in the **Federal Register** on October 31, 2003 (68 FR 61987). A proposal to amend the annotation for Methionine was published in the **Federal Register** on July 29, 2005 (70 FR 43786). The annotation for Methionine was amended by final rule in the **Federal Register** on October 21, 2005 (70 FR 61217).

IV. Statutory and Regulatory Authority

The OFPA, as amended (7 U.S.C. 6501 *et seq.*), authorizes the Secretary to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k)(2) and 6518(n) of OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. The National List petition process is implemented under § 205.607 of the NOP regulations. The current petition process (72 FR 2167, January 18, 2007) can be accessed through the NOP Web site at *http://www.ams.usda.gov/nop/Newsroom/FedReg01_18_07NationalList.pdf.*

A. Executive Order 12866

This action has been determined not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. The final rule adding Methionine to the National List was reviewed under this Executive Order and no additional related information has been obtained since then. This proposed rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A

governing State official would have to apply to USDA to be accredited as a certifying agent, as described in § 2115(b) of the OFPA (7 U.S.C. 6514(b)). States are also preempted under §§ 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to § 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to § 2120(f) of the OFPA (7 U.S.C. 6519(f)), this proposed rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, AMS performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). The AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this proposed rule would not be significant. The current approval for the use of Methionine in organic poultry production will expire October 1, 2008. The effect of this proposed rule would be to allow the continued use of Methionine through October 1, 2010. The AMS concludes that this action would have minimal economic impact on small agricultural service firms. Accordingly, USDA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000 and small agricultural producers are defined as those having annual receipts of less than $750,000.

The U.S. organic industry at the end of 2001 included nearly 6,949 certified organic crop and livestock operations. These operations reported certified acreage totaling more than 2.09 million acres of organic farm production. Data on the numbers of certified organic handling operations (any operation that transforms raw product into processed products using organic ingredients) were not available at the time of survey in 2001; but they were estimated to be in the thousands. By the end of 2005, the number of U.S. certified organic crop, livestock, and handling operations totaled about 8,500. Based on 2005 USDA, Economic Research Service, data from USDA-accredited certifying agents, U.S. certified organic acreage increased to 4 million acres.

The U.S. sales of organic food and beverages have grown from $1 billion in 1990 to nearly $17 billion in 2006. The organic industry is viewed as the fastest growing sector of agriculture, representing almost 3 percent of overall food and beverage sales. Since 1990, organic retail sales have historically demonstrated a growth rate between 20 to 24 percent each year, including a 22 percent increase in 2006.

In 2005, U.S. retail sales of organic poultry products were $161 million. The growth rate for organic poultry retail sales is estimated at between 23 and 38 percent per year. Organic egg sales were $161 million in 2005 and are projected to grow at a rate of 8 to 13 percent per year. The organic industry, in 2005, raised approximately 13.8 million birds. Organic poultry is raised in 40 of the 50 states. In addition to being sold as whole products, organic eggs and poultry are used in the production of organic processed products such as eggnog, ice cream, soups, broth, noodles, French toast, pancakes, waffles, tartar sauce, hollandaise sauce, mayonnaise, salad dressing, cookies, cakes, cheese cakes, bread, and other bakery goods.

In addition, USDA has 95 accredited certifying agents who provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop*. AMS believes that most of these entities would be considered small entities under the criteria established by the SBA.

D. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by section 350(h) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulations at 5 CFR part 1320.

The AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

E. General Notice of Public Rulemaking

This proposed rule reflects recommendations submitted to the Secretary by the NOSB for extending the

use of Methionine, a synthetic substance, in organic poultry production until October 1, 2010. The NOSB evaluated this substance using criteria in the OFPA. The substance's evaluation was initiated by a petition from the MTF.

The NOSB has determined that while wholly natural substitute products exist, they are not presently available in sufficient supplies to meet poultry producer needs. Therefore, synthetic Methionine is presently a necessary component of a nutritionally adequate diet for organic poultry. Thus, loss of the use of Methionine, at this time, would disrupt the well-established organic poultry market and cause substantial economic harm to organic poultry operations. Accordingly, the NOSB has recommended extending the allowed use of synthetic Methionine in poultry production until October 1, 2010.

AMS believes that a 30-day period for interested persons to comment on this rule is appropriate because the continued use of Methionine is critical to organic production, and this rulemaking should be completed before October 1, 2008, to avoid any disruptions to the market place.

List of Subjects in 7 CFR part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205, subpart G is proposed to be amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

§ 205.603 [Amended]

2. Section 205.603(d)(1) is amended by removing ''2008'' and adding ''2010'' in its place.

Dated: July 1, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–15390 Filed 7–11–08; 8:45 am]

BILLING CODE 3410–02–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–58107; File No. S7–19–07]

RIN 3235–AJ57

Amendment to Regulation SHO

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; notice of re-opening of comment period.

SUMMARY: The Securities and Exchange Commission is re-opening the comment period on the ''Amendments to Regulation SHO'' it re-proposed in Securities Exchange Act Release No. 56213 (August 7, 2007), 72 FR 45558 (August 14, 2007), (the ''Proposal''). In view of the continuing public interest in the Proposal we believe that it is appropriate to re-open the comment period to provide the public with additional information before we take action on the Proposal.

DATES: Comments should be received on or before August 13, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–19–07 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–19–07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: James A. Brigagliano, Associate Director, Josephine J. Tao, Assistant Director, Victoria L. Crane, Branch Chief and Christina M. Adams, Staff Attorney, Office of Trading Practices and Processing, Division of Market Regulation, at (202) 551–5720, at the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting additional public comment on proposed amendments to Rules 200 and 203 of Regulation SHO [17 CFR 242.200 and 242.203] under the Securities Exchange Act of 1934 (''Exchange Act''). In the Proposal, the Commission re-proposed amendments to Regulation SHO under the Exchange Act intended to further reduce the number of persistent fails to deliver [1] in certain equity securities by eliminating the options market maker exception to the close-out requirement of Regulation SHO. The Commission also sought comment on two alternatives to elimination that would limit the scope of the options market maker exception. The Commission is re-opening the comment period, which ended on September 13, 2007, to provide additional information with respect to the Proposal to the public.

At the same time that the Commission re-proposed amendments to Regulation SHO to eliminate the options market maker exception to Regulation SHO's close-out requirement, the Commission approved amendments to Regulation SHO to eliminate the rule's ''grandfather'' provision.[2] The ''grandfather'' provision had provided that fails to deliver established prior to a security becoming a threshold security did not have to be closed out in accordance with Regulation SHO's thirteen consecutive settlement day close-out requirement. The amendment to eliminate the ''grandfather'' exception became effective on October 15, 2007.

[1] A ''fail to deliver'' occurs when the seller of a security fails to deliver the security by settlement date. Generally, investors must complete or settle their security transactions within three business days. This settlement cycle is known as T+3 (or ''trade date plus three days''). T+3 means that when the investor purchases a security, the purchaser's payment generally must be received by its brokerage firm no later than three business days after the trade is executed. When the investor sells a security, the seller generally must deliver its securities, in certificated or electronic form, to its brokerage firm no later than three business days after the sale.

[2] Securities Exchange Act Release No. 56212 (Aug. 7, 2007), 72 FR 45544 (Aug. 14, 2007).

The amendment also contained a one-time phase-in period that provided that previously-grandfathered fails to deliver in a security that was a threshold security on the effective date of the amendment must be closed out within 35 consecutive settlement days from the effective date of the amendment. The phase-in period ended on December 5, 2007.[3]

In response to the Proposal, commenters urged the Commission to obtain empirical data to demonstrate the relationship between fails to deliver and the options market maker exception before it determines whether additional rulemaking is necessary. In particular, commenters urged the Commission to obtain data relating to the impact of the elimination of the grandfather provision and connecting fails to deliver to the options market maker exception.[4] The Commission has obtained additional data on fails to deliver since the Proposal was published. Accordingly, in response to commenters and because the Commission believes the additional data will aid the public in commenting on the Proposal, the Commission is re-opening the comment period to share with the public data obtained by the Commission regarding fails to deliver and the options market maker exception, and to provide the public with an opportunity to comment on the data.

To ascertain whether fails to deliver are not being closed out due to the options market maker exception to the close-out requirement since the elimination of the ''grandfather'' provision, Commission staff obtained data on securities with extended fails to deliver from a National Securities Clearing Corporation (''NSCC'') participant which settles and clears for a large segment of the options market for January and February 2008. A review of this data reveals that a high number of fails to deliver were not closed out as a result of the options market maker exception.[5] Specifically, the data indicated that as of January 31, 2008, the options market maker exception was claimed in 16 threshold securities for a total of 6,365,158 fails to deliver. As of February 29, 2008, the data indicated that the options market maker exception was claimed in 20 threshold securities for a total of 6,963,949 fails to deliver.

In addition, the Commission is releasing the results of a recent analysis by the Commissions' Office of Economic Analysis (''OEA'') of fails to deliver before and after the elimination of Regulation SHO's ''grandfather'' provision.[6] As set forth below, these results show that extended fails to deliver in non-optionable threshold securities declined significantly after the elimination of the ''grandfather'' provision while extended fails to deliver in optionable threshold securities increased significantly. Specifically, changes for optionable threshold securities include:

- The average daily number of optionable threshold list securities increased by 25.0%.
- The average daily number of new fail to deliver positions in optionable threshold securities increased by 45.3%.
- For fails aged more than 17 days in optionable threshold securities, the average daily dollar value of fails to deliver increased by 73.4%.
- For fails aged more than 17 days in optionable threshold securities, the average daily number of fail to deliver positions increased by 30.7%.
- The average daily number of optionable threshold list securities with fails aged more than 17 days increased by 40.9%.

Further, changes for non-optionable threshold securities include:

- The average daily number of non-optionable threshold list securities decreased by 3.5%.
- The average daily number of new fail to deliver positions in non-optionable threshold securities increased by 7.4%.
- For fails aged more than 17 days in non-optionable threshold securities, the average daily dollar value of fails to deliver decreased by 34.5%.
- For fails aged more than 17 days in non-optionable threshold securities, the average daily number of fail to deliver positions decreased by 38.8%.
- The average daily number of non-optionable threshold list securities with fails aged more than 17 days decreased by 32.6%.[7]

To ascertain the extent to which fails to deliver were not being closed out due to the options market maker exception to the close-out requirement prior to the elimination of the ''grandfather'' provision, Commission staff obtained data from certain self-regulatory organizations for 2006 and 2007 regarding use of the options market maker exception. This data is explained in more detail below.

In 2007, as part of its regular Regulation SHO surveillance, the Financial Industry Regulatory Authority (''FINRA'') conducted a review of securities with extended fails to deliver at the NSCC to ascertain the continuing cause of fails to deliver, and to also assess compliance with NYSE Rule 440/SEA[8] and Regulation SHO. As set forth below, according to data provided by one NSCC participant that settles and clears for a large segment of the options market, a number of fails to deliver at that participant were not closed out due to claims that the fails were excepted from the close-out requirement as a result of the options market maker exception.

A review of the FINRA data for 2007 shows the following:

Month	Fails to deliver[9]	Number of securities
February	35,665	1
March	900,276	5
April	3,433,639	8
May	228,878	2
June	2,441,122	14
July	462,414	6
August	3,065,710	12
October	4,456,340	13
November	1,841,063	2
December	5,621,982	15

As indicated in the table above, the options market maker exception to the close-out requirement was claimed for a large number of fails to deliver for the entire year, including both before and after October 15, 2007, the effective date of the elimination of Regulation SHO's ''grandfather'' provision.

On December 11, 2006 the Chicago Board of Options Exchange (''CBOE'')

[3] *See id.*

[4] *See e.g.*, Comments of Keith F. Higgins, Committee on Federal Regulation of Securities, American Bar Association, Section of Business Law (Oct. 5, 2007); comments of John Gilmartin and Ben Londergan, Group One Trading, LP (Sept. 28, 2007); *see also* comments of Gerald D. O'Connell, Susquehanna Investment Group (Oct. 11, 2007).

[5] We note that the data reflects only those extended fails to deliver not closed out due to the options market maker exception and, therefore, does not reflect all fails to deliver in the securities included in the data.

[6] *See* Memorandum from the Commission's Office of Economic Analysis (dated June 9, 2008), which is available on the Commission's Internet Web site at *http://www.sec.gov/comments/s7-19-07/s71907.shtml* (the ''OEA Memorandum''). As discussed above, the ''grandfather'' provision was eliminated as of October 15, 2007 with a one-time phase in period which expired on December 5, 2007. The sample data used in the OEA Memorandum compares two time periods: April 9, 2007–October 14, 2007, which is defined as the ''pre-amendment period'' and December 10, 2007–March 31, 2008, which is defined as the ''post-amendment period.''

[7] *See id.*

[8] NYSE Rule 440 requires that ''[e]very member not associated with a member organization and every member organization shall make and preserve books and records as the Exchange may prescribe and as prescribed by Rule 17a–3.''

[9] These numbers represent fails to deliver which, as explained in footnote 1 above, are shares of a security that are not delivered by settlement date. According to the data provided to FINRA, these fails to deliver were not closed out due to the options market maker exception.

along with the American Stock Exchange, NYSE Arca, Inc., and the Philadelphia Stock Exchange initiated a Regulation SHO review of options market makers covering the time period from May through July 2006. The focus of these reviews was the options market maker exception to the close-out requirement for aged fails to deliver in threshold securities that were open for thirteen consecutive settlement days.[10]

According to CBOE, the reviews revealed that there were 598 exceptions claimed, covering 58 threshold securities for a total of 11,759,799 fails to deliver. For the 58 threshold securities identified, the number of fails to deliver for which an exemption was claimed from the close-out requirement ranged from 207 to 1,950,655. The following is a distribution of the number of fails to deliver:

Number of fails to deliver for which exception was claimed	Number of threshold securities
0–100,000	35
100,001–200,000	4
200,001–300,000	4
300,001–400,000	5
400,001–500,000	4
500,001–600,000	2
600,001–700,000	
700,001–800,000	1
800,001–900,000	
900,001–1,000,000	1
>1,000,000	2

Therefore, the Commission is re-opening the comment period for Exchange Act Release No. 56213 from the date of this release through August 13, 2008.

Dated: July 7, 2008.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15768 Filed 7–11–08; 8:45 am]

BILLING CODE 8010–01–P

[10] The ''grandfather'' provision was also in effect during this period but was not the subject of these reviews.

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2005–5]

Retransmission of Digital Broadcast Signals Pursuant to the Cable Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of time to file comments and reply comments.

SUMMARY: The Copyright Office is extending the time in which comments and reply comments may be filed in response to its Notice of Proposed Rulemaking regarding the retransmission of digital television broadcast signals by cable operators under Section 111 of the Copyright Act.

DATES: Comments are due July 31, 2008. Reply Comments are due September 16, 2008.

ADDRESSES: If hand delivered by a private party, an original and five copies of a comment or reply comment should be brought to the Library of Congress, U.S. Copyright Office, Room LM–401, James Madison Building, 101 Independence Ave., SE, Washington, DC 20559, between 8:30 a.m. and 5 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office.

If delivered by a commercial courier, an original and five copies of a comment or reply comment must be delivered to the Congressional Courier Acceptance Site (''CCAS'') located at 2nd and D Streets, NE, Washington, DC between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, LM–403, James Madison Building, 101 Independence Avenue, SE, Washington, DC 20559. Please note that CCAS will not accept delivery by means of overnight delivery services such as Federal Express, United Parcel Service or DHL.

If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment or reply comment should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ben Golant, Assistant General Counsel, and Tanya M. Sandros, General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On June 2, 2008, the Copyright Office published a Notice of Proposed Rulemaking (''NPRM'') seeking comment on specific proposals and policy recommendations related to the retransmission of digital television signals by cable operators under Section 111 of the Copyright Act. *See* 73 FR 31399 (June 2, 2008). On June 30, 2008, the Copyright Office published its Section 109 Report to Congress which, inter alia, broadly discussed the continuing need for the cable statutory license (''Report''). The Report also examined many of the digital signal retransmission issues that were initially raised in the NPRM and recommended changes to the existing statute to accommodate digital television in the cable statutory license royalty scheme. *See* Satellite Home Viewer Extension and Reauthorization Act ~109 Report at 108–114.

On July 7, 2008, the National Cable and Telecommunications Association (''NCTA'') filed a request for an extension of time to file comments and reply comments in this proceeding. NCTA asks for an extension because ''(f)urther study of the recently–released Report is necessary to assess its relationship to the rules proposed in the Digital NPRM and its impact, if any, on comments that may be filed in that proceeding.'' NCTA requests a brief two week extension so that comments would be due on July 31, 2008 and September 16, 2008.

Given the complexity of the issues raised in the NPRM, and the publication of the Section 109 Report to Congress thereafter, the Office grants the request to extend the comment and reply comment dates in this proceeding. Comments are now due on July 31, 2008 and reply comments are due on September 16, 2008.

Dated: July 8, 2008

Tanya Sandros,

General Counsel

U.S. Copyright Office

[FR Doc. E8–15951 Filed 7–11–08; 8:45 am]

BILLING CODE 1410–30–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0524; FRL–8690–7]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Attainment Demonstration for the Dallas/Fort Worth 1997 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to conditionally approve the 1997 8-hour ozone attainment demonstration State Implementation Plan (SIP) revision for the Dallas/Fort Worth moderate 8-hour ozone nonattainment area (DFW area) submitted by the State of Texas on May 30, 2007 and supplemented on April 23, 2008. We are also proposing to approve the associated attainment Motor Vehicle

Emissions Budgets (MVEBs), the Reasonably Available Control Measures (RACM) demonstration, and two local control measures relied upon in the attainment demonstration. The proposed approval of the attainment demonstration is conditioned on Texas adopting and submitting to EPA prior to March 2009, a complete SIP revision to limit the use of Discrete Emission Reduction Credits (DERCs), beginning in March 2009. Final conditional approval of the DFW 1997 8-hour ozone attainment demonstration SIP is contingent upon Texas adopting and submitting to EPA an approvable SIP revision for the attainment demonstration SIP's failure-to-attain contingency measures plan that meets section 172(c)(9) of the Clean Air Act (the Act).

We also are proposing to fully approve the DFW area SIP as meeting the Reasonably Available Control Technology (RACT) requirement for volatile organic compounds (VOCs). EPA is proposing these actions in accordance with section 110 and part D of the Act and EPA's regulations.

DATES: Comments must be received on or before August 13, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2007–0524, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *U.S. EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6coment.htm*. Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov*. Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2007–0524. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal, which is part of the EPA record, is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Paige, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6521; fax number 214–665–7263; e-mail address *paige.carrie@epa.gov*.

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

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I. What Has the State Submitted?

On May 30, 2007, Texas submitted a plan designed to attain the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone adopted in 1997 (the 1997 8-hour ozone standard). Texas supplemented this submission with additional information in a letter dated April 23, 2008. The attainment demonstration relies on a variety of controls on minor and major stationary sources and controls on mobile source emissions. The emissions reductions are achieved through a combination of Federal, State and Local measures. These measures are projected to reduce emissions of NO_X, a precursor to ozone formation, in the DFW area by over 50% from 1999 levels. Some of the measures that have been relied on in this demonstration are being reviewed in this **Federal Register** (FR). Many are being reviewed or have been reviewed in other FR notices. All of the measures that are relied on in the plan must be approved before we can finalize our approval. The Texas Commission on Environmental Quality (TCEQ) used photochemical modeling and other corroborative evidence to predict the improvement in ozone levels that will occur due to these controls while taking into account the growth in the DFW area.

The State's submission does not directly address the new ozone standard issued March 12, 2008. The new ozone standard is more protective and will require further reductions to attain, but the Texas plan will provide progress toward this new standard.

II. What Action Is EPA Proposing?

The EPA is proposing to conditionally approve the 1997 8-hour ozone attainment demonstration SIP revision for the DFW area (8-hour DFW SIP) submitted on May 30, 2007 and supplemented on April 23, 2008. This submittal provides photochemical modeling, corroborative analyses, additional control measures not explicitly accounted for in the photochemical modeling, and a combination of adopted Federal, State, and local measures to demonstrate that the DFW area will attain the 1997 8-hour ozone standard by June 15, 2010. It also includes, as part of the attainment demonstration SIP, an attainment MVEB, a RACM analysis, and control measures. In today's action, we are proposing to approve two local measures relied upon in the attainment demonstration—the Voluntary Mobile Source Emission Reduction Program (VMEP) and Transportation Control Measures (TCMs); we are proposing to adopt the attainment MVEBs into the DFW SIP; and we are proposing to approve the demonstration that all RACM have been adopted for the DFW area. Finally, in today's action, EPA also is proposing to fully approve the VOC RACT submissions for both the 1-hour and the 1997 8-hour ozone standards.

A. What Must Happen Before We Can Finalize Conditional Approval?

Before finalizing conditional approval of the attainment demonstration SIP, we must fully approve all of the control measures relied on in the attainment demonstration and the Reasonable Further Progress (RFP) Plan. In the 8-hour DFW SIP, the State included new NO_X emissions reductions measures and rules (found in Title 30 of the Texas Administrative Code, Chapter 117—denoted 30 TAC 117 or Chapter 117), a VMEP, and TCMs. The revisions to Chapter 117 include NO_X reductions from the following sources: Industrial, Commercial, and Institutional (ICI) Sources, Minor Sources, Electric Generating Facilities (EGFs), Cement Kilns and East Texas Combustion Sources. The measures in the 8-hour DFW SIP also include rules that were adopted under the 1-hour ozone standard, which have been extended to the larger 8-hour ozone nonattainment area (NAA). These previously adopted rules were approved in earlier actions and are listed in section V–C of today's rulemaking. In separate rulemakings, we are proposing to approve the 2007 RFP SIP and the remaining control measures including NO_X controls submitted on May 30, 2007, for point and area sources, which include ICI Sources, EGFs, Minor Sources, Cement Kilns and East Texas Combustion Sources. We will also take action on other emissions reduction measures submitted on May 13, 2005, which include the April 9, 2003 Alcoa Federal consent decree, an Energy Efficiencies Program and NO_X rules.

A description of all the measures that must be approved by EPA before any final approval of the attainment demonstration SIP is in section V of today's action.

In addition, we cannot finalize the proposed conditional approval until Texas submits an approvable SIP revision to satisfy the section 172(c)(9) requirement for contingency measures that would be triggered if the area fails to attain the 8-hour ozone standard by its attainment date. This SIP revision (the contingency for final conditional approval) must be a complete approvable failure-to-attain contingency measures plan. Texas has committed to adopt and submit a plan that relies upon three VOC SIP rules for Offset Lithographic Printing; Degassing or Cleaning of Stationary, Marine and Transport Vessels; and Petroleum Dry Cleaning, as well as fleet turnover from mobile sources after 2009 as contingency measures. These measures are more fully described in a commitment letter submitted by the State, dated June 13, 2008 (this letter is in the docket for this action). If the State submits a complete failure-to-attain contingency measures plan that relies upon the four above-noted control measures, EPA could proceed with a final conditional approval of the attainment demonstration SIP. Any comments concerning whether these four measures are sufficient to meet the failure-to-attain contingency measure requirement should be raised at this time. EPA does not plan to provide an additional opportunity for comment unless the State modifies these measures or submits a failure-to-attain contingency measures plan relying on other measures.

III. Why Is This Proposed Approval Conditional and What Are the Implications of a Conditional Approval?

Our proposed approval of the attainment demonstration SIP is conditional because the attainment demonstration submitted in May 2007 relies upon unlimited usage of DERCs, whereas the April 2008 supplemented attainment demonstration relies upon a limited usage of DERCs; as yet there is no State rule implementing this change. The condition is based on a commitment by the State of Texas to adopt and submit by March 1, 2009, a complete SIP revision that includes an enforceable mechanism that would allow no more than 3.2 tons per day (tpd) of DERCs to be used in 2009 in the DFW area. If Texas intends to allow for more than 3.2 tpd of DERCs to be used beginning January 1, 2010, then the SIP revision must also provide appropriate limits on the use of DERCs and a detailed justification explaining how the future adjustments to the allowed DERC usage will be consistent with continued attainment of the 8-hour ozone standard. The justification must provide sufficient detail such that the public can be assured that attainment will continue to be projected in future years. For further explanation of the limitation on DERCs, see section V–D.

Under section 110(k) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures within one year from the date of approval. The TCEQ submitted a commitment letter to EPA committing to adopt and submit to EPA by March 1, 2009, a SIP revision addressing the DERC restrictions for 2009 and addressing the use of DERCs in subsequent years. This letter, dated June 13, 2008, is in the docket for this action.

If EPA issues a final conditional approval of the SIP before March 1, 2009 and Texas subsequently fails to adopt and submit the DERC SIP revision as committed to in its letter, EPA will issue a letter to the State converting the conditional approval of the 1997 8-hour ozone DFW attainment demonstration SIP to a disapproval. Such disapproval will start the 18-month clock for sanctions in accordance with section 179(b) and 40 CFR 52.31 and the 2-year clock for a Federal Implementation Plan (FIP) under section 110(c). EPA would publish in the **Federal Register** a notice regarding the disapproval of the SIP and the start of sanctions and FIP clocks for the DFW area, and would revise the provisions in the Code of Federal Regulations (CFR) to reflect the disapproval of the SIP.

The State anticipates the DERC and contingency measure SIP revisions to be proposed for public review and comment in Summer 2008, and final adoption of the revisions is expected early in 2009 in order to meet the commitment to submit the revisions to EPA by March 1, 2009. If EPA finds that the submitted DERC SIP rule is approvable, we will propose approval of the rule and could proceed with final full approval of the attainment demonstration. Final conditional approval of the attainment demonstration SIP would remain in effect until EPA takes final action to convert the conditional approval to a full approval or disapproval of the attainment demonstration. If EPA cannot fully approve the revision concerning the use of DERCs in the DFW area, EPA will propose disapproval of the submitted SIP rule and the attainment demonstration SIP for the DFW area. The 18-month clock for sanctions and the 2-year clock for a FIP start on the date of final disapproval.

IV. Background

A. What Are the National Ambient Air Quality Standards?

Section 109 of the Act requires EPA to establish National Ambient Air Quality Standards (NAAQS or standards) for pollutants that ''may reasonably be anticipated to endanger public health and welfare,'' and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety, and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. These standards present State and local governments with the minimum air quality levels they must meet to comply with the Act. Also, these standards provide information to residents of the United States about the air quality in their communities.

B. What Is a SIP?

The SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the State, to ensure that the State meets the NAAQS. The SIP is required by section 110 and other provisions of the Act. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. Each State must submit these regulations and control strategies to EPA for approval and incorporation into the federally-enforceable SIP. Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin.

C. What Is Ozone and Why Do We Regulate It?

Ozone is a gas composed of three oxygen atoms. Ground-level ozone is generally not emitted directly from a vehicle's exhaust or an industrial smokestack, but is created by a chemical reaction between NO_X and VOCs in the presence of sunlight and high ambient temperatures. Thus, ozone is known primarily as a summertime air pollutant. NO_X and VOCs are precursors of ozone. Motor vehicle exhaust and industrial emissions, gasoline vapors, chemical solvents and natural sources emit NO_X and VOCs. Urban areas tend to have high concentrations of ground-level ozone, but areas without significant industrial activity and with relatively low vehicular traffic are also subject to increased ozone levels because wind carries ozone and its precursors hundreds of miles from their sources.

Repeated exposure to ozone pollution may cause lung damage. Even at very low concentrations, ground-level ozone triggers a variety of health problems including aggravated asthma, reduced lung capacity, and increased susceptibility to respiratory illnesses like pneumonia and bronchitis. It can also have detrimental effects on plants and ecosystems.

D. Background of the Texas SIP for the DFW Area

The original Texas SIP was submitted to EPA by the Texas Air Control Board (renamed twice and known today as the TCEQ), on January 31, 1972. On May 31, 1972, EPA conditionally approved the SIPs for all States in Volume 37 of the **Federal Register** beginning on page 10842 (denoted 37 FR 10842). The Texas SIP was conditionally approved (37 FR 10842, 10895) and the status of the Texas SIP was codified in Title 40, Part 52 of the U.S. Code of Federal Regulations (denoted 40 CFR 52), Subpart SS, sections 52.2270 to 52.2280. Since 1972, many revisions for the DFW area have been submitted by the State and approved by EPA. These include numerous control measures implemented under the 1-hour ozone standard to reduce NO_X and VOC emissions from area, point and mobile

sources; the Post-1996 Rate-of-Progress (ROP) Plan; and the 15% ROP Plan. As a result of the implementation of these measures, the area's 1-hour ozone values have declined significantly in the past several years; the 2004–2006 1-hour design value for the DFW area is 124 parts per billion (ppb) and the preliminary [1] 1-hour design value for 2005–2007 is also 124 ppb, which meets the 1-hour standard, although this standard was revoked in 2005.

E. Background of This SIP Revision To Address the 1997 Ozone NAAQS

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm), which is more protective than the previous 1-hour ozone standard (62 FR 38855).[2] Under EPA regulations at 40 CFR part 50, Appendix I, the 1997 8-hour ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). For ease of communication, many reports of ozone concentrations are given in parts per billion (ppb); ppb = ppm × 1,000. Thus, 0.084 ppm becomes 84 ppb.

The EPA published the 1997 8-hour ozone designations and classifications on April 30, 2004 (69 FR 23858). The DFW area was designated nonattainment, classified as moderate, and includes nine counties: Collin, Dallas, Denton, and Tarrant counties (these constitute the former 1-hour ozone NAA, hereafter referred to as the core counties), and Ellis, Johnson, Kaufman, Parker and Rockwall counties. The effective date of designation for the 1997 8-hour ozone NAAQS was June 15, 2004. The attainment demonstration for the DFW area was due by June 15, 2007 and was submitted on time. The attainment date for the DFW area is June 15, 2010.

EPA also published the first rule governing implementation of the 8-hour ozone standard (Phase 1 Rule) on April 30, 2004 (69 FR 23951). The Phase 1 Rule addresses classifications for the 8-hour NAAQS; revocation for the 1-hour NAAQS; how anti-backsliding principles will ensure continued progress toward attainment of the 8-hour NAAQS; attainment dates; and the timing of emissions reductions needed for attainment.

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Rule in *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the court modified the scope of vacatur of the Phase 1 Rule. See 489 F.3d 1245 (D.C. Cir. 2007), *cert. denied*, 128 S.Ct. 1065 (2008). The court vacated those portions of the Phase 1 Rule that provide for regulation of the 1997 8-hour ozone NAAQS in some nonattainment areas under Subpart 1 in lieu of Subpart 2 and that allowed areas to revise their SIPs to no longer require certain programs as they applied for purposes of the 1-hour NAAQS; new source review, section 185 penalties, and contingency plans for failure to meet RFP and attainment milestones. The decision does not affect the requirements for areas classified under subpart 2, such as the DFW area, to submit an attainment demonstration plan for 1997 8-hour ozone NAAQS and to attain the NAAQS no later than the outside date for attainment required for the area's classification.

EPA published a second rule governing implementation of the 8-hour ozone standard (Phase 2 Rule) on November 29, 2005 (70 FR 71612), as revised on June 8, 2007 (72 FR 31727). The Phase 2 Rule addresses, among other things, the following control and planning obligations as they apply to areas designated nonattainment for the 1997 8-hour ozone NAAQS: RACT, RACM, photochemical modeling, and attainment demonstrations. EPA issued the Phase 2 Rule so States and Tribes would know how these statutory control and planning obligations apply and when SIP revisions are due for these obligations so that the States could develop timely submissions consistent with the statutory obligations and attain the NAAQS as expeditiously as practicable, but no later than the attainment dates specified for each area's classification. Litigation on the Phase 2 Rule is pending before the D.C. Circuit Court of Appeals.

On May 23, 2007, the TCEQ approved revisions to the SIP for the DFW 8-hour ozone nonattainment area. The SIP revisions were submitted to EPA on May 30, 2007 and supplemented on April 23, 2008. Today we are addressing the 1997 8-hour ozone attainment demonstration SIP for the DFW area and a RACT finding for both the 1-hour and 1997 8-hour ozone standards.

F. What Is an Attainment Demonstration?

In general, an ozone attainment demonstration includes a photochemical modeling analysis and other evidence (referred to as ''weight of evidence'') showing how an area will achieve the standard as expeditiously as practicable, but no later than the attainment date specified for its classification. For purposes of the 8-hour ozone standard, a determination of attainment (or failure to attain) is based on the most recent three complete years of data prior to the area's attainment date. Thus, since the DFW moderate area has a maximum attainment date of June 15, 2010, the most recent three years of data for determining attainment in the DFW area will be from the three preceding calendar years, i.e., the air quality monitoring data from 2007, 2008 and 2009. Alternatively, an area may qualify for up to two one-year extensions. The first extension can be granted if the area's 4th highest daily 8-hour average is 0.084 ppm or less. The second can be granted if the 4th highest value averaged over the attainment year and the extension year is 0.084 ppm or less (40 CFR 51.907).

To demonstrate attainment, an area must predict that emissions during the ozone season preceding the attainment date will meet the standard. EPA requires areas to implement all the measures necessary to demonstrate attainment as expeditiously as practicable, but no later than the start of the final complete ozone season preceding the area's attainment date (40 CFR 51.908). The DFW area's ozone season runs from March 1st through October 31st (62 FR 30270, June 3, 1997 and 40 CFR part 58, Appendix D); therefore, all of the control strategies relied upon in the attainment demonstration must be implemented by March 1, 2009.

In addition to the approvable modeling and weight of evidence components of an attainment demonstration SIP, for the attainment demonstration SIP to be approvable, it must contain the following elements which must also be approved: attainment MVEBs for transportation conformity purposes; the measures relied on as necessary to demonstrate attainment; RACM; an RFP plan and the RFP/failure-to-attain contingency measures requirements for the area. (*See Sierra Club* v. *EPA*, 294 F.3d 155, 163 (D.C. Cir. 2002).

[1] The value is considered preliminary because TCEQ has not certified that it has completed the quality assurance and quality control checks. We expect the data certification by by July 1, 2008.

[2] EPA issued a revised 8-hour ozone standard on March 27, 2008 (73 FR 16436). The designation and implementation process for that standard is just starting and does not affect EPA's action here.

V. Evaluation of the DFW 1997 8-Hour Ozone Attainment Demonstration SIP

Below, we discuss the statutory and regulatory requirements that prescribe our review of the State's attainment demonstration, the elements in the State's submittal, and our evaluation of those elements comprising the attainment demonstration SIP. Separate from our review of the State's attainment demonstration SIP is our review of the State's VOC RACT demonstration, and we discuss the VOC RACT statutory and regulatory requirements in section VI.

A. Legal Requirements for Approval

The Act requires SIPs for nonattainment areas to demonstrate that the area will attain the 8-hour ozone standard as expeditiously as practicable, but no later than outside dates established by the Act. The Phase 2 Rule provides timing and guidance for this requirement for the 1997 8-hour ozone standard and identifies the modeling guidance available to make the demonstration. Moderate 1997 8-hour ozone nonattainment areas must attain the standard no later than June 15, 2010. An attainment demonstration SIP must include technical analyses to locate and identify sources of emissions that are causing violations of the NAAQS within nonattainment areas; adopted measures with schedules for implementation and other means and techniques necessary and appropriate for attainment; and contingency measures required under section 172(c)(9) of the Act that can be implemented without further action by the State or the Administrator to cover failures to meet RFP milestones and/or attainment. The attainment demonstration SIP must include a demonstration that the area is meeting RACM. An attainment demonstration SIP must also identify MVEBs for transportation conformity purposes. EPA's regulations at 40 CFR 51.908(c) specifically require that areas classified as moderate and above submit a modeled attainment demonstration based on a photochemical grid modeling evaluation or any other analytical method determined by the Administrator to be at least as effective as photochemical modeling. Section 51.908(c) also requires each attainment demonstration to be consistent with the provisions of section 51.112, including Appendix W to 40 CFR part 51 (i.e., ''EPA's Guideline on Air Quality Models,'' 68 FR 18440, April 15, 2003). See also EPA's ''Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8-hour Ozone NAAQS,'' October 2005 and ''Guidance on the Use of Models and Other Analyses for Air Quality Goals in Attainment Demonstrations for Ozone, PM2.5, and Regional Haze,'' April 2007 (hereafter referred to as ''EPA's 2005 and 2007 A.D. guidance documents''), which describe criteria that an air quality model and its application should meet to qualify for use in an 8-hour ozone attainment demonstration. For the detailed review of modeling and the Weight of Evidence (WOE) analyses and EPA's conclusions on the DFW 8-hour Ozone Attainment Demonstration see the ''Modeling and Other Analyses Attainment Demonstration'' (MOAAD) Technical Support Document (TSD). The MOAAD TSD also includes a complete list of applicable modeling guidance documents. These guidance documents provide the overall framework for the components of the attainment demonstration, how the modeling and other analyses should be conducted, and overall guidance on the technical analyses for attainment demonstrations.

As with any predictive tool, there are inherent uncertainties associated with photochemical modeling. EPA's guidance recognizes these limitations and provides approaches for considering other analytical evidence to help assess whether attainment of the NAAQS is likely. This process is called a WOE determination. EPA's modeling guidance (updated in 1996, 1999, and 2002) discusses various WOE approaches. EPA's modeling guidance has been further updated in 2005 and 2007 for the 1997 8-hour attainment demonstration procedures to include a WOE analysis as an integral part of any attainment demonstration. This guidance strongly recommends that all attainment demonstrations include supplemental analyses beyond the recommended modeling. These supplemental analyses would provide additional information such as data analyses, and emissions and air quality trends, which would help strengthen the overall conclusion from the photochemical modeling. A WOE analysis is specifically recommended to be included as part of any attainment demonstration SIP where the modeling results predict Future Design Values (FDVs) ranging from 82 to less than 88 ppb (EPA's 2005 and 2007 A.D. guidance documents). EPA's interpretation of the Act to allow a WOE analysis has been upheld. See *1000 Friends of Maryland* v. *Browner*, 265 F.3d 216 (4th Cir. 2001) and *BCCA Appeal Group* v. *EPA*, 355 F.3d 817 (5th Cir. 2003).

Since much of TCEQ's initial work was conducted prior to the 2005 guidance document, the earlier draft 1999 modeling guidance document (EPA–454/R–99–004, May 1999; ''DRAFT Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8-Hour Ozone NAAQS'') was also used by TCEQ and EPA prior to the October 2005 guidance issuance. There are two main changes compared to EPA's modeling attainment demonstration guidance issued in 1991. First, EPA recommends a modeled attainment test in which model predictions are used in a relative rather than absolute sense. Second, the role of the WOE determination, when used, has been expanded. That is, where the use of WOE was previously considered optional, it is now strongly recommended as an integral part of an attainment demonstration in addition to the modeled attainment test.

TCEQ submitted the DFW attainment demonstration SIP with photochemical modeling and WOE analyses. The results of the photochemical modeling and WOE analyses are discussed below in Subsection B. The projected growth rates and emissions reductions (or increases) for the control measures and other means relied upon in the modeling are discussed in Subsection C.

B. Eight-Hour Attainment Demonstration Modeling and Weight of Evidence

a. What Were the Results of the Photochemical Modeling Attainment Demonstration?

i. What Is a Photochemical Grid Model?

Photochemical grid models are the state-of-the-art method for predicting the effectiveness of control strategies in reducing ozone levels. The models use a three-dimensional grid to represent conditions in the area of interest. TCEQ chose to use the Comprehensive Air Model with Extensions (CAMx), Version 4.31 photochemical model for this attainment demonstration SIP. The model is based on well-established treatments of advection, diffusion, deposition, and chemistry. Another important feature is that NO_X emissions from large point sources can be treated with the plume-in-grid sub-model that helps avoid the artificial diffusion that occurs when point source emissions are inserted into a grid volume. The use of the newer version improves the plume dispersion algorithms and adds full NO_X and VOC chemistry in the plumes. TCEQ has used the CAMx model in other SIPs and EPA has approved many SIPs using CAMx based modeling analyses. Part 51 Appendix W indicates that photochemical grid models should be used for ozone SIPs and lists a

number of factors to be considered in selecting a photochemical grid model to utilize. EPA has reviewed TCEQ reasons for selecting CAMx and EPA agrees with the choice by TCEQ to utilize CAMx for this SIP.

In this case, TCEQ has developed a grid system that consists of three nested grids. The outer grid stretches from west of Austin to Maine and parts of the Atlantic Ocean to the east, and from parts of southern Canada in the north to the southern tip of Texas and the Gulf of Mexico on the southern edge. The model uses nested grid cells of 36 km on the outer portions, 12 km in east Texas and portions of nearby States and a 4-km grid cell covering the DFW Nonattainment Area. For more information on the modeling domain, see the MOAAD TSD. The model simulates the movement of air and emissions into and out of the three-dimensional grid cells (advection and dispersion); mixes pollutants upward and downward among layers; injects new emissions from sources such as point, area, mobile (both on-road and nonroad), and biogenic into each cell; and uses chemical reaction equations to calculate ozone concentrations based on the concentration of ozone precursors and incoming solar radiation within each cell. Air quality planners choose historical time period(s) (episode(s)) of high ozone levels to apply the model. Running the model requires large amounts of data inputs regarding the emissions and meteorological conditions during an episode.

Modeling to duplicate conditions during an historical time period is referred to as the base case modeling and is used to verify that the model system can predict historical ozone levels with an acceptable degree of accuracy. It requires the development of a base case inventory, which represents the emissions during the time period for the meteorology that is being modeled. These emissions are used for model performance evaluations. Texas modeled a 1999 episode, so the base case emissions and meteorology are for 1999. If the model can adequately replicate the ozone levels in the base case and responds adequately to diagnostic tests, it can then be used to project the response of future ozone levels to proposed emission control strategies.

ii. What Episode Did Texas Choose To Model?

Texas chose an historical episode, August 13–22, 1999, that had been previously used in modeling for the Early Action Compact modeling of the Northeast Texas Area. The episode encompasses ten days with 8-hour ozone exceedances every day, except for the first day which is one of the two spin-up days. The first two days are considered spin-up days that are usually not used in the modeling analysis because it ordinarily takes 1–2 days to work out the initial condition biases. Of the eight days (ten days minus the two spin-up days) that have exceedances, all but one day have multiple monitors with exceedances (2–7 of the nine monitors). On average, the eight exceedance days have four monitors exceeding the standard each day. This episode contains a variety of meteorological conditions which resulted in high concentrations of ozone in the area as measured on both a 1-hour and 8-hour basis, and many of the days had conditions similar to the predominant types of meteorological conditions that yield high ozone in the DFW NAA.

We evaluated Texas' episode selection for consistency with our modeling guidance (1991, Draft 1999, 2005, and 2007 versions). Among items that we considered were the ozone levels during the selected period compared to the Design Value [3] (DV) at the time; how did the meteorological conditions during the proposed episode match with the conceptual model of ozone exceedances that drive the area's DV; were enough days modeled; and was the time period selected robust enough to represent the area's problem for evaluating future control strategies. EPA's guidance indicates that all of these items should be considered when evaluating available episodes and selecting episodes to be modeled. EPA believes that the episode from August 13–22, 1999, is an acceptable episode for development of the 8-hour ozone attainment plan. It has a number of meteorological conditions that match the conditions that yield high ozone in the conceptual model for the DFW NAA, and was among the episode periods evaluated with the highest number of ozone exceedances. In selecting episodes, it is advantageous to select episodes with several exceedance days and with multiple monitors exceeding the standard each day when possible. This episode was among the best episodes for the periods evaluated when the selection was being conducted initially, and also had the benefit that significant work was being conducted for this period for the Early Action Compact for the Tyler/Longview/Marshall area of Northeast Texas. See the MOAAD TSD for further discussion and analysis.

iii. How Well Did the Model Perform?

Model performance is a term used to describe how well the model predicts the meteorological and ozone levels in an historical episode. EPA has developed various diagnostic, statistical and graphical analyses that TCEQ has performed to evaluate the model's performance to determine if the model is working adequately to test control strategies. TCEQ has done many analyses of both interim model runs and the final base case model run and deemed the model's performance adequate for control strategy development. As described below, we agree with their assessment.

From 2003 to 2005, several iterations of the modeling were preformed incorporating various improvements to the meteorological modeling, the 1999 base case emissions inventory, and other model parameters. These iterations totaled over 40 combinations as TCEQ worked to refine the modeling. EPA reviewed these interim modeling steps and provided comments and suggestions. When TCEQ felt the model performance was acceptable, EPA (Region 6 and the Office of Air Quality Planning and Standards) and TCEQ had a detailed meeting on February 1, 2005 to cover all aspects of the episode selected and model performance (meteorological, emissions, and photochemical). TCEQ shared a compact disc with detailed statistical and graphical analysis of the different modeling (meteorology and photochemical). This data included analysis of meteorological outputs compared to benchmark statistical parameters that TCEQ previously developed as target values that are being used in many areas of the country. TCEQ also shared graphical analyses of the meteorology. TCEQ also shared extensive analyses of the photochemical modeling for several base case modeling runs that included: diagnostic tests with reductions/increases of precursor emissions, time series of 1-hour and 8-hour ozone, EPA 1-hour statistics, EPA 8-hour statistics, ozone spatial plots, quantile-quantile plots, ozone pre-cursor data, and ozone animations.

After extensive review, EPA was satisfied that the meteorological modeling was meeting most of the statistical benchmarks, and was transporting air masses in the appropriate locations for most of the days of the episode. EPA also conducted a thorough review of the model's performance in predicting ozone and ozone pre-cursors and found that

[3] The design value is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration (40 CFR 50, Appendix D.

performance was within the recommended 1-hour ozone statistics for almost all days and all statistics. We also evaluated the 8-hour statistics, results of diagnostic and sensitivity tests, and multiple graphical analyses and determined that overall the ozone performance was acceptable for Texas to move forward with future year modeling and development of an attainment demonstration. EPA's acceptance of the modeling is documented in a June 6, 2005 letter.

Subsequently, TCEQ made further minor refinements to the modeling which are discussed in the MOAAD TSD. EPA agrees that after these minor refinements, the overall model performance remains acceptable. The final base case modeling evaluation, Run 46 using CAMx 4.31, further reduced negative bias and reduced the total errors in the modeling system. EPA agrees that the overall model performance (Run 46) is adequate, but notes that even with the refinements, the modeling still tends to have some bias on the higher ozone days. This bias may make future year assessments conservative, i.e., the amount of ozone reduction predicted is likely less than will actually occur, if the modeling is not fully replicating local ozone generation. See the MOAAD TSD for further analysis.

iv. Once the Base Case Is Determined To Be Acceptable, How Do You Use the Modeling for the Attainment Demonstration?

Once the base case modeling is determined to be consistent with EPA's guidance and acceptable for replicating the ozone levels observed in the 1999 episode period, the modeling can be used as the basis for developing the future year modeling. TCEQ then evaluated the base case emission inventory, and made some minor adjustments to the inventory to account for things that would not be expected to occur again or that were not normal (example: inclusion of EGUs that were not operating due to temporary shutdown during the base case period but were expected to be operating in 2009). This emission inventory is called the 1999 baseline emission inventory. The photochemical model is then executed again to obtain a 1999 baseline model projection.

EPA's guidance recommends using 2002 as the baseline inventory year, but there are several possible methodologies available to calculate baseline design values. For example, if a state models episodes from other years it can project (or back-cast) to 2002 to provide a starting point for future year projections. Alternatively, a state may use a baseline year earlier than 2002 for the following reasons: (1) Availability of air quality and meteorological data from an intensive field study, (2) the desire to use meteorological data that may be ''more representative'' of typical ozone conditions compared to the baseline design value period, and (3) availability of a past modeling analysis in which the model performed well. Texas chose 1999 as the baseline year. There was extensive air quality and meteorological modeling available for the 1999 episode from Early Action Compact Modeling in Northeast Texas; 1999's meteorology represented typical ozone conditions. Therefore, EPA and TCEQ weighed the pros and cons and concurred, based upon the above-noted reasons, that it was not necessary to attempt to project to a 2002 baseline emission inventory in this specific case.

The baseline emission inventory is also used as the basis, along with other data, to project and estimate the future case emission inventory along with consideration of any state and Federal regulations that result in emission changes from the 1999 period. Since DFW is classified as a moderate NAA, the attainment deadline is as expeditiously as practicable but no later than June 15, 2010. Any emissions reductions must be implemented no later than the beginning of the previous ozone season; in this case, March 1, 2009, which is the beginning of the final full ozone season preceding the attainment date, if the reductions are to support attainment. The meteorological modeling that has been reviewed and determined to be acceptable for the base case is also used for the meteorological conditions in the future year modeling (no changes are made). The future case modeling uses the base case meteorology and estimated 2009 emissions to assess the impact of economic growth in the region and State and Federal control measures that will become effective during the modeling period from 1999 to March 1, 2009. After the State develops a 2009 future baseline emission inventory, photochemical modeling is conducted to get the 2009 baseline ozone levels. The State then begins conducting modeling sensitivities and modeling assessments of potential additional emission reductions to aid in the planning of a control strategy that will demonstrate attainment.

The 8-hour ozone modeling guidance changed the attainment test to use the modeling analysis in a relative sense instead of an absolute sense as was done in 1-hour ozone demonstrations. To predict ozone levels in the future, we estimate a value that we refer to as the FDV. First, we need to calculate a Base Design Value (BDV). The BDV is calculated for each monitor that was operating in the base period by averaging the three DVs that include the base year (1999); that would be the DV for 1997–1999, 1998–2000, and 1999–2001 to result in a center-weighted BDV.

To estimate the FDV, a value is also calculated for each monitor that is called the Relative Response Factor (RRF) using the baseline and future modeling. The RRF value is calculated by taking the ratio of the sum of the daily highest 8-hour ozone value predicted around a monitor in 2009 and dividing by the sum of the daily highest 8-hour ozone value predicted around the same monitor in the 1999 baseline analysis. ''Around the monitor'' for DFW modeling (4km grid) is defined as the 7×7 array of grid cells surrounding the monitor (with the monitor in the middle). EPA's guidance indicates that only days that had a baseline value above a threshold concentration (TCEQ used 70 ppb, which is the minimum value indicated by EPA guidance) should be used in the RRF calculations. For each monitor, EPA recommends adding up all the daily maximum 8-hour ozone values (for days that the maximum 8-hour ozone value in the baseline were above the threshold in the area around the monitor) and dividing that sum by the sum of the daily maximum 8-hour ozone values predicted in 2009 around the monitor. This calculation yields the RRF for that monitor. The RRF is then multiplied by the Base Design Value (BDV) for that monitor to yield the FDV for that monitor. This step is conducted for each monitor. The modeled values for each monitor may be calculated to the hundredths of a ppb which is rounded to get to tenths of a ppb, which is then truncated to an integer (in ppb) at the end of the process (as recommended by EPA's guidance). The truncated values are included in the tables in this notice (Example: Modeled value of 84.94 is rounded to 84.9 and then truncated to 84; Example 2: Modeled value of 84.95 is rounded to 85.0 and then truncated to 85).

v. What Modeling Approaches Were Used for This Attainment Demonstration?

TCEQ submitted photochemical modeling labeled Combo 10 in its attainment demonstration SIP. Combo 10 contains the control measures outlined in Section D, including additional control measures with compliance deadlines of March 1, 2010. The 2010 compliance dates apply to

certain rich-burn natural gas fired engines for oil and gas compressors in 33 Texas counties, all of which are outside the DFW NNA. Despite the fact that the controls noted above are not required to be implemented until 2010, Combo 10 assumes that all control measures will be in effect by the beginning of the 2009 ozone season. TCEQ assumed that early compliance would occur as a result of incentive grants for early compliance provided by the State Legislature. Texas SB2000 provides an appropriation of $4 million to compensate operators of the regulated oil and gas compressors who comply with new emission reduction standards early. There is also a large population of emission units in this category and it is also likely that a percentage of these will be controlled before the 2009 ozone season, or before the beginning of the core part of the ozone season. Due to the large number of emission units in this category and the incentive for early compliance, TCEQ believes these units will provide significant reductions by 2009.

A small portion of the point source NO_X Controls in the DFW NAA, that yield about 2.4 tpd of NO_X reductions, also have 2010 compliance dates. TCEQ did not attempt to assess the potential impact of not having these additional point source reductions in place by the beginning of the 2009 ozone season. The 2.4 tpd of NO_X reductions from these sources is less than 10% of the NO_X emission reductions adopted for the DFW NAA. EPA also notes that some of these 2.4 tpd NO_X reductions are in the western part of the DFW NAA and would not directly affect the modeled impact at the monitors with the highest modeled FDVs (Frisco and Denton monitors) for this episode, but would be expected to help reduce ozone impacts at other monitors in Parker and Tarrant counties that have been added to the DFW area monitoring network since 1999.

For a more complete description of the modeling procedures conclusions and EPA's evaluation of these procedures and conclusions, see the MOAAD TSD in the Docket for this action (EPA–RO6–OAR–2007–0524).

vi. What Did the Results of TCEQ's Combo 10 Modeling Show?

The results of modeling the final control strategy runs are shown in Table 1. As previously discussed, the State submitted modeling (Combo 10) that took into account all the reductions from adopted regulations, including those with 2010 compliance dates. TCEQ has proposed an alternative RRF calculation method that calculated a daily RRF for each monitor and then averaged the values to yield the RRF that was multiplied by the BDV to yield the FDV. In the following Table 1, we evaluate the model FDV calculations using both EPA's guidance method for RRF calculation and the alternate RRF calculation approach that TCEQ had developed. Details on the two methods are included in the TSD. For most monitors, the alternate FDV calculations make only minor differences. We have calculated the FDVs in the following tables using the final truncated numbers in accordance with EPA guidance. Since the TCEQ RRF calculation method did not make significant differences in the FDVs and with the truncation to whole numbers, we have used the TCEQ RRFs for the final assessment with consideration of the FDVs using EPA's RRF method. The results of EPA's RRF method are contained in the MOAAD TSD. Table 1 includes the modeling projections prior to evaluating any other modeling runs, any additional model based projections, and any WOE considerations for the Combo 10 modeling run. Table 1 also includes the results from the two methodologies to calculate the FDVs.

TABLE 1.—JUNE 15, 2007 SIP CONTROL STRATEGY MODELING PROJECTIONS FOR 2009

Monitor	BDV 1999	FDV 1999 Combo 10	
		EPA	TCEQ
Frisco	100.3	89	88
Dallas Hinton C60	92	85	85
Dallas North C63	93	84	84
Dallas Exec C402	88	78	78
Denton	101.5	88	88
Midlothian	92.5	83	83
Arlington	90.5	80	80
Ft Worth C13	98.3	85	85
Ft Worth C17	96	84	84

The first column is the Base DV for the 1999 period that is used with the modeling RRFs for calculating the FDVs. For Combo 10, the analysis shows that 5 of the 9 monitors are projected to be in attainment (at or below 84 ppb); two monitors (Ft. Worth C13 and Dallas Hinton C60) are projected to be very near attainment with 85 ppb; and projections for the other two monitors are 88 ppb for Denton and 88/89 ppb for the Frisco monitor. As shown in Table 1, the FDVs are on the order of 8–12 ppb less than the Base DVs, which is a large reduction in ozone levels due to existing State and Federal measures and the newly adopted measures.

For a more complete description of the modeling procedures conclusions and EPA's evaluation of these procedures and conclusions, see the MOAAD TSD in the Docket for this action (EPA–RO6–OAR–2007–0524).

In addition to the modeling results, TCEQ has presented other evidence to demonstrate that attainment will be reached. These additional WOE analyses are evaluated in Section 2 below. Since TCEQ's May 30, 2007 submittal, TCEQ has also provided additional information dated April 23, 2008 that supplements the modeling analysis (discussed in part h below) and also the WOE (also discussed in section 2 below).

vii. Evaluation of Other Modeling Projections Without Benefit of Measures With a 2010 Compliance Date

Due to our concerns that not all control measures relied on in the Combo 10 analysis are required to be implemented prior to the 2009 ozone season, we also reviewed an alternative photochemical modeling analysis. The additional modeling, which we refer to as Photochemical Dispersion Modeling Reanalysis 2009 (PDMR 2009), evaluates the ozone levels in 2009 based on the TCEQ control measures with

compliance dates of March 1, 2009 or earlier and does not consider the impact from the adopted rules that have compliance dates after March 1, 2009. The adopted SIP included 2.4 tpd of NO_X emission reductions in the DFW NAA with a 2010 compliance date, while the adopted reductions within the DFW NAA with a 2009 compliance date of March 1, 2009 or earlier yield 23.48 tpd of NO_X reductions. The adopted SIP also included 22.4 tpd of NO_X reductions outside the DFW NAA due to the control of rich-burn compressor engines with a compliance date after March 1, 2009. Since these emission reductions occur outside the DFW NAA, they would not be expected to yield the same amount of ozone benefit as similar reductions in the DFW NAA would yield. The PDMR 2009 modeling helps to assess the potential impacts of these 2010 compliance rules.

This evaluation of PDMR 2009 sets the lower bound of model predictions for the FDV in 2009 and the Combo 10 run sets the upper bound. This approach is consistent with attempting to consider the bounds of potential benefit from the adopted measures included in the SIP.

Table 2 includes the modeling projections for both the Combo 10 and PDMR 2009 modeling runs.

TABLE 2.—JUNE 15, 2007 SIP CONTROL STRATEGY MODELING PROJECTIONS FOR 2009

Monitor	BDV 1999	FDV Combo 10	FDV PDMR 2009
		TCEQ RRF	TCEQ RRF
Frisco	100.3	88	88
Dallas Hinton C60	92	85	85
Dallas North C63	93	84	85
Dallas Exec C402	88	78	79
Denton	101.5	88	88
Midlothian	92.5	83	84
Arlington	90.5	80	81
Ft Worth C13	98.3	85	85
Ft Worth C17	96	84	85

For PDMR 2009, the analysis shows that 3 of the 9 monitors are projected to be in attainment (at or below 84 ppb); four monitors (Ft. Worth C13, Ft. Worth C17, Dallas North C63, and Dallas Hinton C60) are projected to be very near attainment with 85 ppb; and projections for the other two monitors are 88 ppb for the Denton and Frisco monitors. This analysis indicates a slightly worse air quality picture than the results from the Combo 10 analysis. The FDVs for several monitors were higher, but the actual difference is only a few tenths of a ppb at most monitors of concern. The largest difference between the PDMR 2009 modeling and the Combo 10 modeling was an increase of 0.3 ppb at the Frisco monitor.

As previously discussed, reductions from rules with a March 2010 compliance date are included in the Combo 10 run. Due to the incentives for early compliance and consideration that some sources will likely be controlled early, we conclude some of the reductions from rules with a March 2010 compliance date will likely be completed early. Therefore, we have evaluated the modeling outputs based on an approach that looks at both the PDMR 2009 outputs, which predicts ozone levels that are slightly worse than what actually will occur and Combo 10 outputs which may be somewhat optimistic. For most monitors, the difference between the PDMR 2009 and Combo 10 outputs is only a few tenths of a ppb of ozone. For more details see the MOAAD TSD for this notice.

viii. Refinements and Adjustments to Future Year (2009) Emission Inventory and Modeling-Based Projected Changes to the SIP Modeling FDVs

Texas provided supplemental information to EPA on April 23, 2008 that expands and confirms information in the May 30, 2007 SIP submittal. See TCEQ's April 23, 2008 letter in the docket. The letter addresses the issues discussed below related to the airport emission inventory, DERCs and back-up generators, demonstrating that the projected emissions in these categories will be lower in 2009 than the projections in the May 30, 2007 SIP submittal. To support the adjustment to the DERC projections, Texas also provided a commitment letter on June 13, 2008 to adopt a SIP revision to limit the use of DERCs that is evaluated below and in section V–D of this notice. This commitment was made by TCEQ in order to strengthen the attainment demonstration.

Regarding airport emissions, TCEQ provided a report performed by Eastern Research Group for Love Field, a Dallas inner city airport, which indicated that emission projections based on more recent data are much lower in 2009 than emission projections relied on in the Combo 10 and PDMR 2009 modeling. The emissions are lower primarily due to changes in market demand post—9/11/2001 and the accelerated replacement of engines which occurred in order to reduce fuel usage because of the drastic increase in fuel costs over the last few years. Projections at Love Field were also impacted by changes in the Wright Amendment Restrictions, a Federal law restricting flights in and out of the airport that imposed restrictions on the number of gates that could be operated (Pub. L. 109–352). TCEQ and North Central Texas Council of Governments (NCTCOG) have provided EPA with updated information which became available since the May 30, 2007 submittal which refines the 2009 future year emission projections for Love Field and also the DFW International Airport (DFWIA). Both airports agree with their revised projections. With the reduced projections at DFWIA and Love Field, total airport emissions for all airports in the DFW NAA are reduced from 24.05 tpd (the amount that was included in the attainment demonstration modeling submitted May 30, 2007) to a lower emission totals of 14.66 tpd (aircraft and ground support equipment). In other words, the new estimates result in a 9.39 tpd airport emission inventory reduction from the May 30, 2007 SIP modeling estimates for the two airports. We have reviewed the updated information and agree that 14.66 tpd NO_X (a decrease of 9.39 tpd from the May 30, 2007 submittal values) represents a more accurate estimate of the projected emissions from the DFW NAA airports.

Consistent with EPA's guidance, sections 12 and 16 of ''Improving Air Quality with Economic Incentive Programs'' (EPA–452/R–01–001, January 2001), TCEQ included in the 2009 modeled projections, all of the Emission Reduction Credits (ERCs) and Discrete Emission Reduction Credits (DERCs) in the bank. EPA guidance calls for emission credits that are being carried in the emissions bank to be included in modeled projections because these emissions will come back in the air when the credits are used. The TCEQ Bank currently holds 20.4 tpd of DERCs. Upon review of the DERC values included in the modeling, TCEQ felt that the inclusion of the entire balance of the DERC bank was overly conservative based on past usage of DERCs. After discussions with EPA, TCEQ committed to adopt and submit as a SIP revision, additional regulations prior to the 2009 ozone season that will limit the usage of DERCs by facilities in the DFW NAA. TCEQ plans to propose a DERC usage limitation such that 17.2 tpd of the 20.4 tpd currently in the 2009 modeling, will not be allowed to be used in 2009. The TCEQ submitted a commitment to EPA to adopt and submit to EPA as a SIP revision, an enforceable mechanism by March 1, 2009 that would limit DERC usage to a maximum daily usage of 3.2 tpd of NO_X DERCs effective March 1, 2009. Texas also committed to adopt and submit as a SIP revision, an enforceable mechanism that would provide a review procedure to ensure that future allowable use of DERCs after January 1, 2010, would not interfere with continued attainment of the 8-hour NAAQS. We have concluded that an enforceable mechanism, as described in more detail elsewhere in this notice, can provide the basis for revising the quantity of DERCs that were modeled in the May 30, 2007 SIP submittal.

In the May 30, 2007 SIP submittal, TCEQ also included requirements on the operation of back-up generators with a March 1, 2009 compliance date that had been estimated as potentially generating 0.9 tpd of NO_X reductions in the DFW NAA. TCEQ quantified and discussed these rules in the WOE section of the SIP rather than including the estimated emission reductions in their modeling. The April 23, 2008 letter, includes an estimate of the reduction of ozone that would occur based on the 0.9 tpd of NO_X reduction.

In its letter, TCEQ provided estimates of the predicted impact on modeled ozone that would occur due to the changes in emission projections for airports, DERCs and back-up generators. TCEQ based these estimates on sensitivity runs of the model, which showed the model's response to various levels of ''across-the-board'' reductions for various emissions categories. These runs differ from more refined modeling because emissions reductions are not assigned to the particular grid cell where they are expected to occur.

EPA considers the use of modeling sensitivity runs, based on the adjustments to the Combo 10 modeling and similar sensitivity runs, to estimate the revised modeling FDV projections to be acceptable in these limited circumstances. In this case, the EPA's modeling sensitivity runs using the future control strategies modeling run, indicate the modeling is reacting very linearly over this limited range. Therefore, estimating changes to ozone levels due to limited emission changes to the 2009 emissions inventory will yield results similar to what would be predicted if there were a new refined future control strategies modeling run using a 2009 emissions inventory reflecting the revised emissions for the airport, DERCs, and back-up generators. Additionally, our analysis is that these modeling sensitivity runs are similar in spatial allocation to how these emission changes for the airports, DERCs, and back-up generators would be analyzed in a new future control strategies model run using a revised 2009 emissions inventory. EPA therefore finds the use of modeling sensitivities runs, based on the adjustments to the Combo 10 modeling and similar sensitivity runs, is acceptable in this fact-specific instance, to estimate the revised modeling FDV projections. Therefore, EPA considers these adjustments to modeled ozone levels to be refinements to the previous modeling (submitted in the May 30, 2007, SIP) that would have been included in TCEQ's original submittal if additional time would have been available to incorporate the changes. EPA has reviewed these three revisions to the emissions inventories and TCEQ's projection of their impact on the future ozone concentration levels and finds that TCEQ provided a reasonable assessment of projected ozone levels. In fact we believe, particularly in the case of the airport emissions adjustment, that if these reductions had been modeled specifically rather than spread across the off road mobile emissions category, there would have been greater ozone reduction benefit because of the location of these emissions when compared to the location of the highest monitors. A more detailed discussion of our analysis is contained in the MOAAD TSD. Relying on these modeling-based estimates presumes that Texas will adopt an enforceable measure that will limit the use of DERCs to 3.2 tpd.

Table 3 lists the estimated level of ozone when the adjustments to airport, DERC and back-up generator emissions are considered.

TABLE 3.—ADJUSTED MODELING PROJECTIONS.

Monitor	FDV combo 10	FDV PDMR 2009	DERC emissions (17.2 tpd reduced)	Airport emissions (9.39 tpd reduced)	Backup generators (0.9 tpd reduced)	Total reduction	FDV adjusted combo 10	FDV adjusted PDMR 2009
	TCEQ RRF	TCEQ RRF	DERC ppb	Airport ppb	B.G. ppb	ppb	TCEQ RRF	TCEQ RRF
Frisco	88.7	89.0	−0.39	−0.32	−0.03	−0.74	87	88
Dallas Hinton	85.6	85.8	−0.36	−0.26	−0.02	−0.64	84	85
Dallas North	84.8	85.1	−0.36	−0.28	−0.03	−0.66	84	84
Dallas Exec	78.8	79.0	−0.47	−0.19	−0.02	−0.68	78	78
Denton	88.6	88.8	−0.32	−0.43	−0.04	−0.79	87	88
Midlothian	83.9	84.1	−0.66	−0.09	−0.01	−0.75	83	83
Arlington	80.9	81.0	−0.67	−0.24	−0.02	−0.94	79	80
Ft Worth C13	85.6	85.7	−0.57	−0.34	−0.03	−0.95	84	84
Ft Worth C17	84.8	85.0	−0.37	−0.43	−0.04	−0.85	84	84

With the addition of these new reductions included in the April 23, 2008, letter, Combo 10 projects using TCEQ's RRF that 7 of 9 are in attainment (at or below 84 ppb); and projections for the other two monitors are 87 ppb for the Denton and Frisco monitors. EPA believes it is reasonable to consider the above values as a sufficient representation of outputs of refined future year control strategy runs. Thus EPA considers the modeling values estimated in Table 3 to represent the final attainment demonstration modeling analysis.

ix. What Are EPA's Conclusions of the Modeling Demonstration?

Using the TCEQ's RRF method and Combo 10 run with the three refinements, both the Frisco and Denton monitors are at 87 ppb and the rest of the monitors are projected to be attaining the standard. EPA also considered EPA's RRF method and determined that while the EPA method gives slightly higher results in some cases, it does not make a significant difference. In addition, EPA concludes that the modeling provided results that are in the range (82 ppb to <88 ppb) where it is recommended other WOE be considered to determine if attainment will be reached.

Although the modeled attainment test is not met at all of the DFW monitors, EPA recognizes that models are approximations of complex phenomena. The modeling analyses used to demonstrate that various emission reduction measures will help to bring the DFW area into attainment of the 1997 8-hour ozone standard, contain many elements that are uncertain (e.g., emission projections, meteorological inputs, model response, simplified chemistry, simplified temporal and spatial allocation of emissions, etc.). These uncertain aspects of the DFW analyses can prevent definitive assessments of future attainment status. The confidence in the accuracy of the quantitative results from a modeled attainment test should be a function of the degree to which the uncertainties in the analysis were minimized. However, while Eulerian air quality models represent the best tools for integrating emissions and meteorological information with atmospheric chemistry and no single additional analysis can replace that, EPA believes that all attainment demonstrations are strengthened by additional analyses that help confirm whether the planned emissions reductions will result in attainment of the standard.

EPA's modeling guidance indicates that when the maximum attainment demonstration modeling projections are within the 82 to less than 88 ppb range, further WOE analyses should be included in the attainment demonstration and evaluated in addition to the modeling projections. EPA's guidance also allows for WOE to be used when the modeled levels are 88 ppb or greater, but notes the further the projected levels are from attainment levels, the more substantial the WOE must be to conclude that the area would reach attainment by the attainment date. EPA's 2005 and 2007 A.D. guidance documents indicate that even though the photochemical modeling demonstration projections do not predict attainment of the standard (the modeled attainment test), assessment of a WOE analysis could yield a determination that the area will attain the standard by its attainment date. The next section will discuss the WOE that has been evaluated for this demonstration and EPA's review of the WOE.

b. What Weight of Evidence Has Been Evaluated?

Both EPA's 2005 and 2007 A.D. guidance documents recommend that in addition to a modeling demonstration, the states include additional analyses, called weight-of-evidence (WOE) when the modeling results in FDVs are greater than 82 ppb. EPA's 2005 and 2007 A.D. guidance documents both discuss additional relevant information that may be considered as WOE. A WOE analysis may provide additional scientific analyses as to whether the proposed control strategy, although not modeling attainment, will likely achieve attainment by the attainment date. The intent of EPA's guidance is to utilize the WOE analysis to consider potential uncertainty in the modeling system and future year projections. Thus, in the DFW case, even though the specific control strategy modeling predicts some monitors to be above the NAAQS, additional information (WOE) may provide a basis to conclude monitored attainment may be achieved. Since the attainment year is just a year away, EPA places greater significance on the WOE, especially consideration of current measured ozone levels and reductions still expected. As models have to make numerous simplifying assumptions and when the system being modeled is very complex, model predictions are not perfect. As a result of some of these inherent uncertainties, EPA's guidance is to consider other evidence (WOE) to help assess whether attainment of the NAAQS is likely. EPA's guidance indicates that several items should be included in a WOE analyses, including the following: Additional modeling, additional reductions not modeled, recent emissions and monitoring trends, known uncertainties in the modeling and/or emission projections, and other pertinent scientific evaluations. Pursuant to EPA's guidance, TCEQ supplemented the control strategy modeling with WOE analyses.

Today we are discussing the more significant components of the WOE that impacted EPA's evaluation of the attainment demonstration. Many other elements are discussed in the MOAAD TSD that had some impact on EPA's evaluation. We are briefly covering the more significant elements in this notice. For EPA's complete evaluation of the WOE considered for this notice, see the MOAAD TSD.

i. What Additional Modeling-Based Evidence Did Texas Provide?

Texas submitted a significant body of information as WOE in the May 30, 2007, submittal. Texas also provided supplemental information and clarifications in a letter to EPA dated April 23, 2008.

1. Texas Emission Reduction Plan (TERP)

TERP reductions for previous years was included in a previous SIP revision, the Increment of Progress (IOP) SIP and included in the modeled projections. Texas provided information in its May 30, 2007, submission and the April 23, 2008, letter documenting that additional reductions from the TERP Program (in 2008 and 2009) which were not included in the modeling are projected to occur. The impact of these reductions can be estimated in the WOE analysis.

The additional TERP funding is expected to produce air quality benefits above-and-beyond those modeled for the SIP. The modeling includes reductions expected for TERP through 2007. Not all of the reductions were accounted for and this shortfall must be achieved before additional WOE reductions can be achieved. As additional WOE, TCEQ estimated that 14.2 tpd reductions in NO_X emissions in the DFW area could be achieved, if 50 percent of available 2008 funding and 70 percent of the 2009 funding were used for projects in the DFW area. This calculation is based upon funding for the DFW area at $53 million in FY2008 and $94 million in FY2009, an average seven-year project life with 250 days/year utilization, an estimated $6,000 cost per ton for TERP program emissions reductions, and using 2008 funds remaining after the short-fall is met ($6000/ton × 250 days/year × 7 years life cycle = $10.5 million for 1 tpd

of NO_X reductions). As of April 2008, requests in 2008 for TERP projects in the DFW area totaled $94.5 million. Therefore, once an estimated $39 million of project requests is utilized to fill the previous shortfall, there is an additional $55.5 million of project requests in the DFW area for further NO_X reductions. These project requests will be reviewed by TCEQ to determine whether the projects are cost effective and TCEQ will make determinations about funding of the projects that pass review. Pending TCEQ's review and granting decisions, the surplus DFW area FY2008 new project requests (estimated surplus of $55.5 million in requests that are estimated to yield 5.25 tpd in NO_X reductions) seem to be in line with the calculated project requests needed to achieve a 14.2 tpd reduction in NO_X emissions if another $94 million (estimated to yield 8.95 tpd in NO_X reductions) in requests are received by TCEQ in FY2009.

It should be noted that the $94 million in requests that was received in FY2008 is much larger than any previous annual request in the DFW area.

2. Compressor Engines

In the April 23, 2008, letter, TCEQ provided supplemental information regarding emissions from stationary, gas-fired engines. During the May 23, 2007, adoption agenda before the TCEQ commissioners for the 30 TAC Chapter 117 rules and DFW 1997 8-hour ozone attainment demonstration SIP, stakeholders commented that the number of stationary, gas-fired engines in the DFW area was likely underestimated in the modeling projections because of the growing exploration and production of natural gas from the Barnett Shale. The commissioners directed the TCEQ's staff to research the issue. TCEQ staff subsequently conducted a survey to re-evaluate the number of stationary, gas-fired engines in the nine-county DFW area. The 2007 TCEQ survey results show there is a much larger fleet of stationary, gas-fired internal combustion engines than estimated in the SIP submittal. Almost all of these engines came into service after the 1999 base year so represent emissions growth. This growth in emissions will be greatly mitigated by the implementation of controls in response to the Chapter 117 rules adopted as part of the May 30, 2007, SIP submission. While mitigated to a large extent, emissions in the model from these sources would be expected to be 3.3 tpd higher than the model projected. Using previously discussed modeling sensitivity runs, we account for this increase in projected emissions and estimate its effect on modeled ozone levels in Table 4.

Table 4 includes the estimates for the amount of ozone reductions for these additional TERP and Compressor Engines WOE emission changes. Table 5 is included below and includes the estimated FDVs with consideration of the two adjustments.

TABLE 4.—ASSESSMENT OF ADDITIONAL WOE EMISSION REDUCTIONS AND POTENTIAL OZONE REDUCTIONS

Monitor	EPA nonroad sensitivity	TERP using nonroad sensitivity	NG compressor engines using nonroad sensitivity	Total change
		tpd reduction −14.2	tpd increase 3.3	Net tpd −10.9
	ppb/ton	ppb change	ppb change	Net ppb change
Frisco	−0.03387	−0.4810	0.112	−0.37
Dallas Hinton C60	−0.03060	−0.4345	0.101	−0.33
Dallas North C63	−0.02866	−0.4070	0.095	−0.31
Dallas Exec C402	−0.02455	−0.3487	0.081	−0.27
Denton	−0.05343	−0.7587	0.176	−0.58
Midlothian	−0.01332	−0.1891	0.044	−0.15
Arlington	−0.02868	−0.4072	0.095	−0.31
Ft Worth C13	−0.03347	−0.4753	0.110	−0.36
Ft Worth C17	−0.04906	−0.6967	0.162	−0.53

As shown in Table 5, using the TCEQ RRF method for both the Combo 10 and PDMR2009 runs with the three modeling refinements and also these modeling-based WOE adjustments, the Frisco and Denton monitors are 87 ppb and the rest of the monitors are projected to be attaining the standard. Other WOE factors, discussed below, indicate further progress that we believe will lead to attainment of the standard.

TABLE 5.—MODELING-BASED ASSESSMENT WITH SOME WOE ELEMENTS INCLUDED

Monitor	FDV adjusted combo 10	FDV adjusted PDMR2009	Total modeling-based WOE reduction	FDV with WOE emission estimates w/ modeling-based ozone adjustments applied to previously adjusted modeling values	
			ppb	Adjusted combo 10 w/WOE	Adjusted PDMR2009 w/WOE
	TCEQ RRF	TCEQ RRF	TCEQ RRF	TCEQ RRF	TCEQ RRF
Frisco	87.9	88.2	−0.37	87	87
Dallas Hinton	84.9	85.2	−0.33	84	84

TABLE 5.—MODELING-BASED ASSESSMENT WITH SOME WOE ELEMENTS INCLUDED—Continued

Monitor	FDV adjusted combo 10	FDV adjusted PDMR2009	Total modeling-based WOE reduction	FDV with WOE emission estimates w/ modeling-based ozone adjustments applied to previously adjusted modeling values	
			ppb	Adjusted combo 10 w/WOE	Adjusted PDMR2009 w/WOE
	TCEQ RRF	TCEQ RRF	TCEQ RRF	TCEQ RRF	TCEQ RRF
Dallas North	84.1	84.4	−0.31	83	84
Dallas Exec	78.1	78.3	−0.27	77	78
Denton	87.8	88.0	−0.58	87	87
Midlothian	83.2	83.4	−0.15	83	83
Arlington	79.9	80.1	−0.31	79	79
Ft Worth C13	84.6	84.8	−0.36	84	84
Ft Worth C17	84.0	84.2	−0.53	83	83

ii. Other Non-Modeling WOE From TCEQ

EPA believes that, with only one year left until attainment, it is important to look at the current air quality and the amount of reductions that are yet to occur to evaluate whether it is realistic that the area can attain by 2009.

The preliminary highest value for the 4th high 8-hour exceedance value monitored at any monitor in the DFW NAA in 2007 was 89 ppb. (The value is considered preliminary because TCEQ has not certified that it has completed the Quality Assurance and Quality Control Checks, a process that will be completed shortly). This is the lowest level that has ever been achieved for the fourth high in this area.

In the May 30, 2007 submittal, TCEQ also provided additional WOE of ozone trends that show the area had monitored attainment for the 1-hour ozone standard (now revoked). The data indicates emission trends and 8-hour ozone levels have decreased despite large population increases. As included in references in TCEQ's TSD for this SIP revision, TCEQ and others have also provided ozone source apportionment assessments showing that DFW emissions can contribute up to approximately 40% of the ozone exceedance values projected by the model at monitors downwind of DFW on high ozone days, while the episode average of all monitors was 24%. Ozone source apportionment techniques are tools used to estimate the contribution of various sources or source categories to modeled ozone levels. In this case, source apportionment is showing that ozone levels on some days during the episode are much more heavily influenced by emissions within the nonattainment area which are the primary target of the control strategy. The attainment test relies on a relative response factor which is an average value that is based on most of the days of the episode. The response of the RRF to local controls would be expected to be consistent with 24% of the ozone level being driven by local emissions since both the RRF and 24% source apportionment are averaged across the episode. However, on specific days when a monitor is more directly impacted by DFW area emissions (downwind of the core DFW area) the ozone value reflected at the monitor may be 40% due to local DFW NAA emissions. Therefore, the attainment test with the averaging of days with different wind directions is likely under-estimating the benefit of local reductions in the DFW NAA.

TCEQ also submitted WOE components that are further discussed in the TSD including the following: Ozone design value trends, ozone variability analysis and trends, model projected RRFs at area monitors that have been installed since the base case period and were not utilized in the modeling, NO_X and VOC monitoring trends, emission trends, NO_X and VOC chemistry limitation analysis, local contribution analyses, and mobile emission sensitivity runs. Details of these WOE components are included in Chapter 3 of the May 30, 2007 SIP submittal. TCEQ also provided updated data for some of these elements in their April 23, 2008 letter.

Additional quantified WOE emissions reductions (without ozone reductions calculated) include a number of energy efficiency measures (Residential and Commercial Building Codes, municipality purchase of renewable energies, political subdivision projects, electric utility sponsored programs, Federal facilities EE/RE Projects, etc.) that TCEQ has estimated will yield 2.12 tpd NO_X reductions.

III. EPA WOE Analysis

Since the May 30, 2007 submittal, EPA has worked with TCEQ to quantify emission reductions that will occur between the latest ozone monitoring season (2007) and the attainment year 2009. EPA has generated an estimate of how much reduction in emissions is expected to occur between 2007 and 2009. Our estimate is that an additional 70 tpd of NO_X reductions will occur due to the existing rules. With the inclusion of all of the potential WOE reduction elements (including 14.2 tpd of NO_X reductions from TERP and additional estimated reductions of 35.7 tpd from control of the underestimated compressor engines) the total potential reductions are estimated as 120 tpd of NO_X. Based on an estimated 2007 NO_X emission inventory, these SIP rules (and other State and Federal requirements) are estimated to reduce NO_X emissions 15% from 2007 levels. With inclusion of all the potential WOE elements identified, the amount of reduction of daily NO_X from 2007 levels increases to 26%. These are large expected changes to the DFW NAA NO_X inventory.

Utilizing multiple sensitivity runs conducted by EPA and TCEQ, we have estimated that the additional 15% reductions which occur after the 2007 ozone season could result in a 2.3 ppb decrease in ozone levels at the controlling monitors (Frisco and Denton). EPA's assessment, including both the SIP and WOE emission reductions estimated to occur after the 2007 ozone season, indicates a 3–4 ppb drop in ozone levels is possible. The 3–4 ppb drop is a rough estimate that could be larger (greater than 4 ppb) and that value would yield a value of 84 ppb or lower to indicate attainment.

The monitored attainment test is monitor specific and in the future the highest monitor that is used to determine attainment (using 2007–2009 data) may not be the one that recorded a high value of 89 ppb in 2007. Only 2 of the 20 monitors in the DFW area monitored 4th high 8-hour values of 89 ppb. The 4th high 8-hour ozone levels monitored at the other 18 monitors were: 88 ppb at one monitor, 87 ppb at one monitor and the rest were 84 ppb or below. If the monitor used for the 2009 attainment test is one of the monitors that recorded a value less than 89 ppb (18 of the 20 monitors), then a 3–4 ppb drop from the 4th high value recorded in 2007 would indicate attainment with a value of 84 ppb or lower. With the emission reductions to occur after 2007, we could expect a 4th high value for the DFW area of approximately 84–85 ppb or lower. Based on this analysis, it is not unreasonable to conclude that attainment in 2009 is possible considering the recent downward monitoring trend (2006–2007) and the preliminary 2007 monitoring values of 89 ppb value.

This simplistic analysis alone does not conclusively prove that the area will attain the standard by 2009, but EPA believes that the most recent preliminary monitoring values from 2007, coupled with the estimated impact of the additional reductions, estimated ozone decreases (estimated as 3–4 ppb), are consistent with reaching attainment by 2009.

1. EPA Meteorological Adjusted Trends Analysis

EPA performed a draft meteorological adjusted trends analysis in October 2007 for many areas in the eastern half of the United States. Meteorological adjusted trends analyses attempt to remove the variability in ozone levels due to differing meteorology and adjust the ozone values to the average meteorology level. These analyses are called met adjusted design values and can be used to indicate whether nonattainment areas are closer to (or farther from) attainment than their actual most recent design values would otherwise indicate. The technique and estimated values should not be used in an absolute sense, but rather as a directional assessment tool.

EPA performed a meteorological adjusted analysis for select DFW monitors with higher DVs for the last 10 years of data (where available). The most recent DFW NAA DV (based on preliminary monitoring data for 2007) is 95 ppb (2005–2007). EPA's meteorological adjusted trends analysis yields a value of 91.7 ppb for the 2005–2007 period. Thus, the analysis indicates that the 2005–2007 period was worse than normal meteorology. So if average meteorology occurs in the future, the DV may potentially drop on the order of 3 ppb without consideration of additional emission reductions. The met adjusted trends analysis also included an assessment of the years around the 1999 base period of the modeling. The assessment of the base period indicated that the meteorology was worse than normal, and when this is taken into account, the highest Base DVs would be about 0.8 ppb lower. If the meteorological adjusted Base DV is used for the modeling projection, the 2009 modeling values would be approximately 0.8 ppb less, thus the 2009 modeling would be closer to attainment. If this 0.8 ppb level decrease is used for the Frisco and Denton monitors, the future modeling and WOE projection would also drop. The resultant estimates would be that Combo 10 would yield 86 ppb at the Denton and Frisco monitors, and for the PDMR2009 modeling the values would be 87 ppb at Frisco and 86 ppb at Denton monitor.

iv. Other WOE Items From Texas Not Currently Quantified: Additional Programs/Reductions

These are additional items in TCEQ's WOE analysis that are not easily quantifiable and are difficult to estimate expected ozone decreases. These elements can still add to the overall WOE analysis but may not warrant as much emphasis as more refined technical analyses.

1. AirCheckTexas

The AirCheckTexas (ACT) program provides funds to individuals as an incentive to retire older, more polluting vehicles or aid in the repair of vehicles' emission control systems. TCEQ included discussion of the ACT program in the WOE section in their May 30, 2007 submittal, but did not include a benefit due to the ACT program in the modeling.

The May 30, 2007 submittal also states that the Texas Legislature was considering additional funding for the ACT—Drive a Clean Machine program. During the 80th Legislative Session, Senate Bill 12 was passed and subsequently signed by the Governor on June 15, 2007. The ACT program for the DFW area was funded at $21,348,583 each for fiscal years 2008 and 2009. Currently the program funding has been increased to approximately $20 million/year for two years in DFW NAA. The Legislature significantly increased the amount paid for replacement of vehicles older than 10 years old (or vehicles that have failed emission testing and can't be reasonably fixed) to $3,000 for a new/recent model year vehicle and $3500 for a hybrid vehicle. Promotion of this program has been unprecedented and recently the State and local agencies have received and processed applications for the $20 million allotted to DFW area this year, well in advance of the State fiscal year end date of August 31st.

The North Central Texas Council of Governments (NCTCOG) is the local entity implementing the program and processing applications. Since the SB 12 enhanced program started on December 12, 2007, there has been high interest and 15,092 applications submitted. Again, outreach by TCEQ, NCTCOG, local business leaders, and local governments has been unprecedented, and recently the NCTCOG indicated that there were 6,986 vouchers issued by April 4, 2008. With the level of voucher issuance and usage, it is likely the program will result in emission reductions greater than considered in the WOE portion of the May 30, 2007 SIP submittal.

Other unquantified WOE emissions reductions include Luminant's (formerly TXU) announcement that they are going to spend $1 billion to yield emission reductions at some of their plants in East and North Central Texas. Luminant has initially indicated that their plans include installing SCR at the Martin Lake plant, SNCR at Monticello and Big Brown plants and improving their Low NO_X burners at one of the Monticello units. We sent a letter to Luminant asking for clarification on what NO_X controls may be in place by the 2009 DFW ozone season, and are currently waiting for a response from Luminant. If we receive a response from Luminant, we will include it in the docket for review. These facilities are to the East and Southeast of the DFW area, and are often upwind of DFW during ozone events. Reductions at these plants will help lower background ozone and pre-cursor entering DFW area on many ozone conducive days and would be expected to yield reductions in ozone levels at the DFW area monitors on many ozone conducive days.

2. Local Quantified and Unquantified Measures

Other unquantified measures include Dallas Sustainable Skylines Initiative, Smartway, Intelligent Transportation System, Truck Lane Restriction, LED Traffic Signal replacement, Blue Skyways Collaborative, Parking Cash-out Program, Roadway Peak Period Pricing, Clean School Bus Program, $4

million incentive for early NG engine control, etc. These programs are not included in the VMEP program and therefore are not being double-counted.

Through the actions of citizens and local governments, an approach to purchase cement that is produced with less NO_X emissions is being considered by local cities. Currently three of the largest cities (Dallas, Ft. Worth, and Arlington) have passed city ordinances addressing the purchase of green cement. These ordinances may yield an additional 1 tpd of NO_X reductions, but this estimate is not certain at this time. We expect additional reductions will be achieved and that the location of the reductions would be beneficial to reducing the area's ozone levels.

Local city and county officials have increased their enforcement of Inspection and Maintenance (I&M) rules by performing site inspections. In certain cases, officials discovered fraudulent transactions, including inspection sticker counterfeiting. The enforcement initiatives by local governments will result in additional emission reductions from mobile sources in the DFW area. Some of these benefits are already considered in the modeling, but these efforts will yield additional actual reductions between 2007 and 2009.

c. Is the 8-Hour Attainment Demonstration Approvable?

EPA is proposing that, taken in balance, the available modeling, evidence, analyses, adopted control strategies (including rules with 2010 compliance dates), the DERCs condition, monitoring data, and additional information support that the DFW area will reach attainment of the 1997 8-hour ozone standard by its attainment date. In making this determination, we have considered supplemental information not available at the time the attainment modeling was performed by TCEQ, including evidence that NO_X emissions reductions will occur that are in addition to the measures adopted and quantified in the May 30, 2007 SIP submittal.

We have considered modeling using two emission reduction scenarios (Combo 10 and PDMR2009), recognizing that the actual emission control level would be somewhere in between. We have also considered the impact of additional measures and reductions documented in the April 23, 2008 letter. With these adjustments, the modeling is showing significant reductions of 7–13 ppb in ozone from the base period, but is still slightly short of attainment. The modeling predicts values greater than 84 ppb at two of the nine monitors, but we believe the WOE assists in bridging the gap to attainment.

We also considered that the model's under prediction of high ozone levels may be biasing the model predictions, and therefore potentially underestimating the ozone reduction that could occur by the emission reductions achieved by local and regional rules and additional WOE elements. We also have considered the impact of meteorological adjustments to the design value projection which would further indicate the future projections may be too high. Finally, we have recognized emission reduction efforts that have not been quantified and included in the modeling or model based WOE estimates.

EPA is also considering non-modeling evidence. One factor that EPA believes is of particular importance is the total NO_X reductions expected in the DFW NAA from 2007 to 2009, which are expected to decrease ozone levels from the 89 ppb fourth high maximum monitored in 2007 to levels consistent with attainment. We have confidence that ozone levels will improve because NO_X emissions are projected to decrease by 26% in the time period 2007–2009. Finally, EPA has considered the most recent ambient data which indicates that the area is on a track that is consistent with achieving attainment of the 8-hour standard by 2009.

Taking these factors together, we believe the modeling, including all the WOE measures, is consistent with attainment.

C. Control Measures Relied Upon by the State in the Control Strategy Modeling

Section 172 of the Act provides the general requirements for nonattainment plans. Section 172(c)(6) and section 110 require SIPs to include enforceable emissions limitations, and such other control measures, means or techniques as well as schedules and timetables for compliance, as may be necessary to provide for attainment by the applicable attainment date. The DFW attainment demonstration SIP is mainly directed at reductions of NO_X since the modeling shows that NO_X reductions will be most effective in bringing the area into attainment of the standard, but the SIP includes VOC emissions reductions as well. The modeling includes Federal, State and local measures. The attainment demonstration modeling also relies on regional measures applied in east and central Texas and measures applied in the Houston (HG) and Beaumont (BPA) ozone nonattainment areas. The State adopted controls to reduce NO_X emissions from mobile sources, ICI Sources, EGFs, Minor Sources, Cement Kilns, and East Texas Combustion Sources. Today's action proposes approval of emissions reductions from two mobile source strategies not previously adopted into the SIP. These strategies are the new VMEP and the new TCMs included in the May 30, 2007 SIP submittal. In separate actions, we are finalizing approval of the April 9, 2003 Alcoa Federal Consent Decree, the Energy Efficiencies Program, and the May 13, 2005, NO_X rules, and we are proposing to approve the NO_X rules for ICI Sources,EGFs, Minor Sources, Cement Kilns, and East Texas Combustion Sources. These actions will assist the area in meeting the 8-hour ozone standard and are relied upon in the control strategy modeling.

The following is the identification of the control measures reflected in the 2009 inventory for the May 30, 2007 revision Future Control Strategy Case modeling run. In addition, we identify which of the State and local controls are addressed in this proposed action and which will be addressed in separate rulemaking actions.

TABLE 6.—FEDERAL MEASURES REFLECTED IN THE DFW 2009 INVENTORY

Federal Tier 1 Federal Motor Vehicle Control Program (FMVCP)
Federal Tier 2 FMVCP
Federal 2007 Heavy Duty Diesel FMVCP standards
Federal National Low Emission Vehicle Program (NLEV)
Federal Tier I and Tier II Locomotive NO_X standards
Federal New Non-road Spark Ignition Engines rule
Federal Heavy Duty Non-road Diesel Engines rule
Federal Tier 1, 2, and 3 Non-road Diesel Engines rule
Federal Small Non-road Spark Ignition Engines rule
Federal Large Non-road Spark Ignition Engines and Recreational Marine rule
Non-road RFG—Federal/state opt in—the 4 core counties

We believe that the State correctly projected the growth rates and emissions reductions for sources subject to these Federal measures.

TABLE 7.—STATE MEASURES REFLECTED IN THE DFW 2009 INVENTORY

Measures	Status
DFW gas-fired engine rule	EPA is taking action in a separate rule.
DFW non-EGUs—banked ERCs and DERCs for VOC and NO_X emissions.	Approved September 6, 2006 (71 FR 52703).
DFW EGUs	EPA is taking action in a separate rule.
DFW non-EGUs	EPA is taking action in a separate rule.
Auxiliary steam boilers in the 5 counties	EPA is taking action in a separate rule.
Stationary gas turbines in the 5 counties	EPA is taking action in a separate rule.
DFW Major Source Rule	EPA is taking action in a separate rule.
DFW Minor Source Rule	EPA is taking action in a separate rule.
Stage I Program, expanded from the 4 core to all 9 counties	Approved January 19, 2006 (71 FR 3009).
Surface Coating Rules, expanded from the 4 core to all 9 counties	Approved January 19, 2006 (71 FR 3009).
Inspection/Maintenance (I/M) Program, expanded from the 4 core to all 9 counties.	Approved November 14, 2001 (66 FR 57261).
Anti-tampering Rule	Approved July 1, 1998 (63 FR 35839).
RFG in the 4 core counties	Approved October 8, 1992 (57 FR 46316).
VOC Rules, expanded from the 4 core to all 9 counties, adopted by TCEQ on 11/15/06.	EPA is taking action in a separate rule.
Portable Fuel Container Rule	Approved February 10, 2005 (70 FR 7041).
Reid Vapor Pressure Rule	Approved April 26, 2001 (66 FR 20927).

We believe that the State correctly projected the growth rates and emissions reductions for sources subject to these State measures.

TABLE 8.—LOCAL MEASURES REFLECTED IN THE DFW 2009 INVENTORY

Measures	Status
VMEP	Proposed for approval in this action.
TERP	Program already approved; SIP credits proposed for approval in this action.
TCMs	Proposed for approval in this action.
Energy Efficiencies Program (EEP)	EPA is taking action in a separate rule.
Speed Limits	Approved October 11, 2005 (70 FR 58978).

We believe that the State correctly projected the growth rates and emissions reductions for sources subject to these local measures.

TABLE 9.—TEXAS REGIONAL MEASURES REFLECTED IN THE DFW 2009 INVENTORY

Measures	Status
Agreed Orders for Alcoa and Texas Eastman	Approved October 26, 2000 (65 FR 64148).
East Texas Chapter 117 NO_X requirements	Approved March 16, 2001 (66 FR 15195).
East Texas Combustion Rule	EPA is taking action in a separate rule.
April 9, 2003 Alcoa Federal Consent Decree	EPA is taking action in a separate rule.
TxLED (includes locomotives)	Approved November 14, 2001 (66 FR 57196).
Portable Fuel Container Rule (34 counties)	Approved February 10, 2005 (70 FR 7041).
Stage I	Approved December 20, 2000 (65 FR 79745).
Lower RVP	Approved April 26, 2001 (66 FR 20927).
Cement kiln rules	EPA taking action in a separate rule.

We believe that the State correctly projected the growth rates and emissions reductions for sources subject to these Regional measures.

TABLE 10.—HOUSTON (HG) AND BEAUMONT (BPA) OZONE NONATTAINMENT AREA MEASURES REFLECTED IN THE DFW 2009 INVENTORY

Measures	Status
Chapter 117 NO_X requirements for HG	Approved November 14, 2001 (66 FR 57230).
Chapter 117 NO_X requirements for BPA	Approved 26, 2000 (65 FR 64158); September 9, 2000 (65 FR 53172); and March 3, 2000 (65 FR 11468).
HG MECT rule for HG EGUs	Approved September 6, 2006 (71 FR 52664).
HG non-EGUs—banked ERCs and DERCs for VOC and NO_X emissions and the MECT NO_X cap.	Approved September 6, 2006 (71 FR 52664).
HG highly-reactive VOC cap (HRVOC) rule	Approved September 6, 2006 (71 FR 52659).

TABLE 10.—HOUSTON (HG) AND BEAUMONT (BPA) OZONE NONATTAINMENT AREA MEASURES REFLECTED IN THE DFW 2009 INVENTORY—Continued

Measures	Status
BPA non-EGUs—banked ERCs and DERCs for VOC and NO_X emissions.	Approved March 16, 2001 (66 FR 15195).
Agreed Orders for Premcor, Exxon Chemical, and Motiva in the BPA Ozone SIP.	Approved April 12, 2005 (70 FR 18995).

We believe that the State correctly projected the growth rates and emissions reductions for sources subject to these measures in the HG and BPA ozone nonattainment areas.

D. Local Measures Relied Upon in the Control Strategy Modeling

Today's action proposes approval of two new emission reductions from local strategies not previously adopted into the SIP. These strategies are the VMEP and TCMs. These controls should assist the area in meeting the 8-hour ozone standard. Approval of the relied-upon control measures must be finalized before EPA takes final action approving the attainment demonstration SIP.

a. Voluntary Mobile Source Emission Reduction Programs

A voluntary mobile source emissions reductions program (VMEP) is an overall control strategy that attempts to complement existing regulatory programs through voluntary, non-regulatory changes in local transportation activities or changes in in-use vehicle and engine composition. Authority for our approval of the VMEP is primarily grounded in section 110(a)(2) of the Act, as well as sections 182(g)(4)(A) and 108. Section 110(a)(2) establishes that a SIP must include ''enforceable emissions limits and other control measures, means or techniques * * * as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter.''

In interpreting 110(a)(2) of the Act, EPA issued a guidance document entitled, ''Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs),'' Memorandum from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, dated October 24, 1997, which allows for SIP credit for voluntary measures. The Fifth Circuit Court of Appeals upheld, as a reasonable interpretation of the Act, EPA's VMEP policy and allowed the State to consider estimated emissions reductions from a VMEP in the Houston area 1-hour ozone attainment demonstration. See *BCCA Appeal Group* v. *EPA, 355 F.3d 817, 825 (5th Cir. 2003).*

The EPA's VMEP Guidance provides a detailed framework for states to obtain SIP emissions reduction credit for such voluntary emissions reductions. EPA guidance allows VMEP to provide a maximum of 3% of the total future year emissions reductions required to attain the appropriate NAAQS. In addition, states must identify and describe the voluntary measures in a VMEP and include supportable projections of emissions reductions associated with the measures. The state must also make an enforceable commitment to monitor, assess, and report on the implementation and emissions effects of the VMEPs, as well as to remedy timely any shortfall in emissions reductions that do not meet the projected levels.

The EPA guidance sets forth specific minimum criteria for approval of VMEPs into the SIP. The criteria specify that VMEP emissions reductions be quantifiable, surplus, enforceable, permanent, and adequately supported. The state must promptly assess and backfill any shortfall pursuant to enforceable commitments in the SIP in the event that the projected emission reductions are not achieved. In addition, VMEPs must be consistent with attainment of the standard and with the RFP requirements and must not interfere with other requirements of the Act.

The NCTCOG, as the regional metropolitan transportation planning agency for the DFW area, has committed to implement the projects and/or programs outlined in the DFW VMEP submittal. The estimated benefits listed are calculated for the year 2009. The NCTCOG will be responsible for monitoring and reporting the emissions reductions to the TCEQ. The NCTCOG, through TCEQ, will cover any VMEP shortfall (of the total 2.63 tpd of NO_X committed) by supplementing additional Transportation Emission Reduction Measures (TERMs). The program areas that may be used to remedy a shortfall are traffic signal improvements; intelligent transportation systems (ITS); and/or freeway and/or arterial bottleneck removal. Texas submitted adequate program descriptions that project emissions reductions attributable to each specific voluntary program and included the basis for the quantified emissions reductions. The DFW VMEP will be implemented in each of the nine counties within the DFW area.

NCTCOG identified seven voluntary programs that will aid in the improvement of the DFW area's air quality, as described below. Table 11 lists the programs and projected credits:

TABLE 11.—VOLUNTARY MOBILE EMISSION REDUCTION PROGRAMS AND CREDITS CLAIMED

Program type	2009 NO_X benefits	2009 VOC benefits
Clean Vehicle Program	0.24	0.05
Employee Trip Reduction	0.43	0.28
Locally Enforced Idling Restriction	0.62	0.02
Diesel Freight Idling Reduction Program	0.33	0.01
SmartWay Transport Demonstration Project	0.00	0.00
Public Agency Policy for Construction Equipment	0.06	0.01
Aviation Efficiencies	0.95	0.24
Total Benefits	2.63	0.61

As stated above, the State commits to evaluating each program to validate estimated credits, to evaluating and reporting on the program implementation and results, and to promptly remedy any credit shortfall. The State also commits to additional TERMs that can be substituted for any shortfall in credit from the estimated credits for VMEP. These include traffic signal improvements, ITS; and/or freeway and/or arterial bottleneck removal.

EPA's analysis of all the VMEP measures shows that each creditable measure is quantifiable. All VMEP measures must be in place by March 1, 2009, in order to be relied on for purposes of attainment by June 15, 2010. The emissions benefits for the measures are calculated for 2009 and are permanent as the NCTCOG is responsible to monitor, assess, report on future emissions reductions from the measures and remedy any shortfall. The reductions are surplus by not being substitutes for mandatory, required emissions reductions and are not being counted in any other control strategy. The SIP with voluntary measures is enforceable because the State has committed to fill any shortfall in credit, thus any enforcement will be against the State. Each measure is adequately supported by personnel and program resources for implementation. The State's goal is 2.63 tpd of NO_X benefit from the VMEP. Our detailed evaluation of the State's VMEP is in the TSD.

The DFW VMEP meets the criteria for credit in the SIP. The State has shown that the credits are quantifiable, surplus, enforceable, permanent, adequately supported, and consistent with the SIP and the Act. We propose to approve the VMEP into the DFW SIP and agree with the projected NO_X emissions reductions of 2.63 tpd and the projected VOC emissions reductions of 0.61 tpd from the VMEP.

b. Transportation Control Measures (TCMs)

TCMs are transportation related projects or activities designed to reduce on-road mobile source emissions. Section 108 of the Act outlines allowable types of TCMs. Federal regulations at 40 CFR 93.101 define a TCM as any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in section 108 of the Act, or any other measure for the purposes of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions.

Nonattainment areas may submit TCMs as air quality control measures into the SIP. TCMs used as an emissions reductions control strategy must be specific and enforceable as required by the Act and EPA guidance. TCMs in the SIP must include an identification of each project, location, length of each project (if applicable), a brief project description, implementation date, and emissions reductions for NO_X and VOC. (See ''*Transportation Control Measures: State Implementation Plan Guidance,'' September 1990 (EPA 450/2–89–020*)).

The process for TCM selection and inclusion in the SIP is based on consideration of all potential measures specified in section 108 of the Act and other emerging transportation control measures that may be reasonably available for implementation and used for emissions reductions. The TCMs identified through this process and included in the SIP are contained and funded in the region's metropolitan transportation plan and Transportation Improvement Program. This ensures that the TCMs were properly adopted, funded and received appropriate approval. Inclusion of TCMs in the SIP also shows evidence of a specific schedule to plan, implement and enforce the measures. EPA approved the Texas TCM rule as a revision to the SIP on December 5, 2002 (67 FR 72379).

The NCTCOG identified in Appendix F of the SIP submittal TCMs for use as a control strategy for attainment of the ozone NAAQS. Appendix F of the submittal lists seven categories of TCMs: bicycle-pedestrian projects; grade separation projects; high-occupancy vehicle/managed lane projects; intersection improvement projects; park and ride projects; rail transit projects; and vanpool projects. The TCMs have been, or will be, implemented in the nine-county DFW area. By the start of the 2009 ozone season, the TCMs should reduce NO_X emissions in the DFW area by 1.53 tpd and VOC emissions by 1.61 tpd.

The State has shown that the DFW TCMs meet the requirements of the Act and applicable EPA guidance. The list of TCMs provided in Appendix F of the State's submittal provides identification of each project, location, length of each project (if applicable), a brief project description, completion/implementation date, and emissions reductions for NO_X and VOCs. EPA's detailed evaluation of the approvability of the State's TCMs can be found in the TSD to this action. EPA agrees that the implementation of TCMs will reduce NO_X emissions in the DFW area by 1.53 tpd and VOC emissions by 1.61 tpd. We therefore propose to approve the State's TCMs into the DFW SIP.

c. Measures Discussed in the April 23, 2008 Letter From TCEQ

Texas provided a letter on April 23, 2008 supplementing the information in the May 2007 SIP. Below we discuss two of the issues raised in the letter (TERP and DERCs) in detail as these have significantly impacted our review of the modeling and weight of evidence as discussed in section V–B.

i. Texas Emission Reduction Plan (TERP)

TERP is a discretionary economic incentive program (EIP) providing economic incentives to reduce emissions. Although TERP is composed of several different components, the part of the plan that EPA approved into the Texas SIP is the diesel emission reduction program. See 66 FR 57160 (November 14, 2001). The approved TERP program is a grant program, unique to Texas, that provides funds through TCEQ in a variety of categories, including emissions reduction incentive grants, rebate grants (including grants for small businesses), and heavy and light duty motor vehicle purchase or lease programs, all with the goal of improving air quality in Texas. Examples of TERP programs include assisting small businesses in purchasing lower-emission diesel vehicles, helping school districts to reduce emissions from school buses, and providing funds to support research and development of pollution-reducing technology. TERP is available to all public and private fleet operators that operate qualifying equipment in any of the ozone nonattainment counties within the State, including the nine that comprise the DFW area.

State rules that govern TCEQ administration of TERP were approved into the SIP on August 19, 2005, at 70 FR 48647. The State's previous methodologies for determining emissions reductions from this type of program have been found acceptable by EPA.

Texas twice submitted TERP estimated emission reductions within the DFW area for approval into the DFW SIP. The first submission, on May 13, 2005, has not previously been approved into the SIP as SIP credit, but DFW has received air quality benefits from the emissions reductions achieved. This first plan submitted calculations based upon legislative funding that projected NO_X emissions reductions of 22.2 tpd from TERP, which would be achieved by June 15, 2007. To date however, the State has shown that only 18.45 tpd of

the calculated 22.2 tpd NO_X emissions reductions have occurred, leaving a shortfall of 3.75 tpd.[4] As explained below, this shortfall of 3.75 tpd TERP SIP credit will be addressed and corrected by March 1, 2009.

The second plan, submitted on April 23, 2008, projected NO_X emissions reductions of 14.2 tpd from TERP, which would be achieved by March 1, 2009. The amount of TERP credit allocated to DFW is predicated on the funding formula set up by the Texas Legislature. For the 2008/2009 biennium, the Texas Legislature fully funded TERP in the amount of $297,144,243. TCEQ will award these TERP grants based on program criteria [5] and it is possible to project NO_X emissions reductions to occur by March 1, 2009, by using an estimated funding allotment for the DFW area. For example, if 50% of the available 2008 funds and 70% of the 2009 funds are used for projects in DFW, the 3.75 tpd shortfall noted above will be corrected, and an additional 14.2 tpd reduction in NO_X emissions can be expected.[6]

The emissions reductions projected for the 2008/2009 TERP are quantifiable, as they are projected to reduce NO_X by 14.2 tpd by March 1, 2009.[7] This measure is surplus, as it will be used to fund projects that are not otherwise required under the Act or the Federally-approved SIP. The measure is permanent, because the average project life extends beyond the period in which it is used in the applicable SIP demonstration. TERP is fully funded by the Texas Legislature and has a history of adequate personnel and resources to implement the program. The TCEQ is obligated to monitor, assess and report on the implementation of TERP to the Texas Legislature. Annual reports document, by area, the total number of tons reduced, tons reduced per year, average cost per ton, grant recipients and type of project funded. During the first grant cycle for 2008, which spanned January through April, TCEQ received applications for the DFW area requesting a total of approximately $94.5 million, which exceeds the 2008 target projected in the April 23, 2008 supplemental letter (see the docket) and is unprecedented for the DFW area.

Projected reductions are calculated based on ''cost per ton'' of previous projects. The cost cited by the TCEQ and used in this estimation is $6,000/ton. Historically, TERP has provided NO_X reductions in DFW with costs averaging less than $4500/ton, and the most recent average costs are under $4000/ton. We have reviewed the information submitted to us (including TCEQ's April 2, 2008 TERP summary), and we agree with the State's cost per ton analysis. We believe that the assumptions used to project emissions reductions from the TERP are conservative, and reasonable for achieving improvements in air quality.

Projects funded by TERP in the DFW area will reduce NO_X emissions by March 1, 2009, and will contribute toward attainment of the 8-hour ozone NAAQS by the area's attainment date. We are proposing to approve that the TERP program will achieve NO_X emissions reductions of 22.2 tpd and 14.2 tpd, based on the May 13, 2005 and the April 23, 2008 submittals combined.

ii. Discrete Emission Credits (DECs)

A DEC represents one ton of certified emissions reductions generated over a discrete time period. DECs can be generated by discrete reductions in criteria pollutants, with the exception of lead, from stationary, area or mobile sources statewide. When a stationary or area source generates a DEC it is known as a discrete emission reduction credit (DERC); when a mobile source generates a DEC it is known as a mobile discrete emission reduction credit (MDERC). The use of the term ''DERC'' collectively refers to DERCs and MDERCs unless specifically stated as only applying to stationary DECs. Once certified by the TCEQ, a DERC can either be banked for future use or used by a source for a variety of uses, including to exceed allowable permit limits, and to meet SIP requirements under 30 TAC Chapters 114, 115, and 117. The authority to generate and use DERCs within Texas is found at 30 TAC Chapter 101, Subchapter H, Division 4—Discrete Emission Credit Banking and Trading (the DERC rule). EPA granted final conditional approval of the Texas DERC rule on September 6, 2006 (71 FR 52703).[8]

Since the use of DERCs will increase emissions in an area, the DFW attainment demonstration must account for the possibility that all DERCs will be used in the nonattainment area (See section 12.5(d) of EPA Guidance entitled ''Improving Air Quality with Economic Incentive Programs,'' EPA–452/R–01–001, January 2001 (Economic Incentive Program (EIP) Guidance)). The TCEQ Emissions Bank currently has 20.4 tpd of DFW NO_X DERCs. The DFW attainment demonstration photochemical modeling accounted for the possibility that all 20.4 tpd credits would be used in the attainment year. Section 16.15 of EPA's EIP Guidance provides that States may use an alternative to predicting that all DERCs will be used in the attainment year by establishing an enforceable mechanism to restrict the use of banked emission reductions to ensure attainment goals. TCEQ determined that restricting the use of DERCs to no more than 3.2 tpd would provide for attainment and be consistent with the flexibility of the DERC program. In a letter dated April 23, 2008, TCEQ provided economic and photochemical sensitivity analyses supportive of this enforceable mechanism.

Our proposed approval of the 8-hour DFW SIP is conditioned on the TCEQ submitting a complete SIP revision that provides a 3.2 tpd restriction on the amount of DERCs available for use in DFW beginning March 1, 2009. The SIP revision may provide that the amount of DERCs available for use beginning January 1, 2010, could increase above 3.2 tpd if the revision provides an enforceable mechanism and a justification that the increase is consistent with attainment and maintenance of the 1997 8-hour ozone standard. In a letter dated June 13, 2008, TCEQ committed to adopting these conditions. Specifically, the TCEQ committed to submitting a SIP revision for the DERC rule that adopts the necessary enforceable mechanism no later than March 1, 2009. If Texas intends to allow for more than 3.2 tpd of DERCs to be used beginning January

[4] The shortfall was the result of an error in calculations.

[5] Rather than allocating funds among a subset of eligible (nonattainment) counties, the State will allocate based on the cost effectiveness of each project.

[6] FY08 TERP funds total approximately $146 million and nearly $40 million went to rebate grants, a 3rd party grant and unfunded FY07 applications, leaving approximately $106 million for FY08. As of May 22, 2008, the DFW area implemented TERP projects totaling 18.45 tpd, but the May 13, 2005 submission projected 22.2 tpd ($22.2 - 18.45 = 3.75$). Assuming $6,000/ton, 250 days/yr and 7 yr project life, it will cost approx. $39,375,000 to correct the May 13, 2005 submission TERP deficiency $(6{,}000 \times 250 \times 7) \times 3.75 = 39{,}375{,}000$. The applications submitted to TCEQ for projects in DFW for FY08 were approximately $94.5 million. Subtract the May 13, 2005 submission shortfall ($94,500,000 − $39,375,000) and we are left with approximately $55,125,000. Divide by the $(6{,}000 \times 250 \times 7)$ to estimate tons reduced by projects for the applications submitted ($55,125,000/10,500,000 = 5.25 tpd for the FY08 applications. Of the projected 14.2 tpd: $14.2 - 5.25 = 8.95$ tpd, $(6{,}000 \times 250 \times 7) \times 8.95 = \$93{,}975{,}000$. Thus, the DFW goal for project applications for FY09 is approximately $93,975,000.

[7] TCEQ cannot award funds for the FY2009 applications prior to September 1, 2008, but the grant application process could begin prior to that date.

[8] TCEQ submitted revisions to the DERC rule as a SIP revision on October 24, 2006. The revisions included the changes to address our conditional approval and other revisions identified in Texas Senate Bill 784. EPA is currently evaluating whether the SIP revision satisfies the conditional approval commitments.

1, 2010, then the SIP revision must also provide appropriate limits on the use of DERCs and a detailed justification explaining how the future adjustments to the allowed DERC usage will be consistent with continued attainment of the 8-hour ozone standard. The justification must provide sufficient detail such that the public can be assured that attainment will continue to be projected in future years. The justification and methodology for any increase in allowable DERC usage must be fully identified in the TCEQ rulemaking and SIP submittal process.

The SIP revision submitted by March 1, 2009, must adequately provide for continued attainment, and include the justification and/or methodology used by TCEQ to increase the amount of DERCs allowed for use in DFW starting in calendar year 2010. The justification provided by TCEQ must satisfy section 110(l) of the Act and demonstrate that the increase will not interfere with attainment or any other applicable measure of the Act. The analysis to satisfy section 110(l) will need to address both quantity and spatial allocation impacts of increased DERC usage on ozone levels.

We will also consider whether TCEQ restricted allowable DERC usage to 3.2 tpd consistent with the attainment demonstration for the year 2009. The DERC rule enables the TCEQ Executive Director (ED) to approve Notice of Intent to Use Forms up to 90 days prior to the use period. Therefore, it is possible that the ED could approve the use of DERCs for a time period including March 1, 2009 and any time thereafter, before the 3.2 tpd restriction has been adopted by the TCEQ and submitted as a SIP revision. At the time EPA takes final action on the proposed conditional approval, EPA will review all Notice of Intent to Use Forms that have been approved for use in 2009 to ensure that the total amount of DERCs approved for use beginning on March 1, 2009 does not exceed 3.2 tpd.

E. Reasonably Available Control Measures (RACM)

The RACM requirement applies to all nonattainment areas that are required to submit an attainment demonstration. Section 172(c)(1) of the Act requires SIPs to provide for the implementation of all RACM as expeditiously as practicable and for attainment of the standard. EPA interpreted the RACM requirements of 172(c)(1) in the General Preamble to the Act's 1990 Amendments (April 16, 1992, 57 FR 13498) as imposing a duty on States to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the particular nonattainment area. EPA also issued a memorandum reaffirming its position on this topic, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' John S. Seitz, Director, Office of Air Quality Planning and Standards, dated November 30, 1999. In addition, measures available for implementation in the nonattainment area that could not be implemented on a schedule that would advance the attainment date in the area would not be considered by EPA as reasonable to require for implementation. EPA indicated that a State could reject certain measures as not reasonably available for various reasons related to local conditions. A state could include area-specific reasons for rejecting a measure as RACM, such as the measure would not advance the attainment date, or was not technologically and economically feasible. Although EPA encourages areas to implement available RACM measures as potentially cost-effective methods to achieve emissions reductions in the short term, EPA does not believe that section 172(c)(1) requires implementation of potential RACM measures that either require costly implementation efforts or produce relatively small emissions reductions that will not be sufficient to allow the area to achieve attainment in advance of full implementation of all other required measures.

The TCEQ provided the DFW RACM analysis in Appendices K, L and M of the SIP submittal. Texas evaluated control strategies for NO_X and VOC emissions, from area, point and mobile (on-road and non-road) sources. The candidate strategies were identified by reviewing documents published by multi-state air planning organizations, EPA documents, and proposed and approved control strategies for nonattainment areas in other states (see list in the TSD). As discussed in Chapters 2 and 3 of the SIP submittal, sensitivity analyses and the photochemical modeling indicate that DFW ozone is more responsive to NO_X reductions than VOC reductions. Based upon the analyses and modeling, only large reductions of VOC emissions, over 100 tpd, would advance the attainment date in DFW. We were unable to identify any additional available evaluated measures that cumulatively would provide 100 tpd in VOC emissions reductions and thus, advance the attainment date for the DFW area. Many measures to reduce VOCs are already in place, through state and Federal mobile source programs and rules to reformulate solvents, including the recently published Federal rules for Architectural and Industrial Coatings (73 FR 15604, March 24, 2008), which Texas estimates could reduce VOC emissions in the DFW area by 12.5 tpd. On November 15, 2006, TCEQ extended the VOC RACT requirements to include all nine counties in the DFW area; we are acting on these measures in a separate rulemaking, though in Section VI we are evaluating whether these rules implement RACT. Our analysis showed that the State already is controlling the significant VOC stationary and mobile sources to RACM levels in the specific DFW area. For more detail, see the TSD.

The majority of NO_X emissions in the DFW area come from mobile sources and industrial processes; emissions of NO_X have been reduced to a large extent with controls on EGUs and improved mobile source programs. Our evaluation of Texas' modeling analyses found that NO_X reductions of at least 40 tpd would be needed to advance the attainment date by one year. This is because at least 40 tpd of reductions will occur in the last year of the plan. We were unable to identify any additional evaluated measures that cumulatively would provide 40 tpd in NO_X emissions reductions and thus, potentially advance the attainment date for the DFW area. Many NO_X control measures are already in place in the nine counties and in the eastern half of Texas. Texas extended the NO_X RACT requirements to include all of the nine counties. Texas adopted new NO_X control measures for ICI Sources (brick, ceramic and lime kilns; glass melting furnaces, etc); EGFs; Cement Kilns; and Stationary Internal Combustion (IC) Engines (gas-fired, diesel and dual-fuel) in the nine counties. Texas also adopted new NO_X control measures for East Texas Combustion Sources located outside of the DFW area.

We also reviewed whether there were any additional available evaluated strategies to reduce NO_X emissions from mobile sources. Our analysis showed that the State SIP has in place TCMs, VMEP, TERP, ACT and a motor vehicle I/M program. Several of the measures on the State's list are already covered under the TCMs, VMEP, TERP and ACT programs and several other measures are being implemented by various cities within the DFW area. Our analysis showed that the State is controlling the significant NO_X stationary and mobile sources to RACM levels.

The State estimated that NO_X emissions reductions of approximately 23 tpd from point sources and

approximately 20 tpd from fleet turnover will be in place in the DFW area by March 1, 2009. Given the control strategies already in place for the DFW area, any additional available measures would not advance attainment. Moreover, we note that in order to advance attainment by a year (*i.e.*, by June 15, 2009), the State would have had to implement any additional control measures needed for attainment by the beginning of the 2008 ozone season, which has already passed. Thus, at this time, it would be impossible to implement additional controls that would advance attainment. EPA has reviewed the RACM analysis provided in the SIP submittal for the DFW area and believes that the State has included sufficient documentation concerning the rejection of certain available measures as RACM for the DFW area.

We propose that any other available evaluated measures are not reasonably available for the DFW area, because they are either economically and/or technically infeasible, or would not produce emissions reductions sufficient to advance the attainment date in the DFW area and, therefore, should not be considered RACM. For more information, see the TSD.

F. Failure-to-Attain Contingency Measures Plan

Section 172(c)(9) of the Act requires nonattainment SIPs to provide for a contingency plan that will take effect without further action by the State or EPA if an area fails to attain the standard by the applicable date. While the Act does not specify the type of measures or quantity of emissions reductions required, EPA provided guidance on contingency plans in the General Preamble (57 FR 13498, 13510). See the TSD for a list of applicable guidance documents.

EPA interprets sections 172 and 182 of the Act to require States with moderate or above ozone nonattainment areas to include contingency measures to implement additional emission reductions of 3% of the adjusted base year inventory in the year following the year in which the failure has been identified. EPA based the 3% recommendation in the General Preamble on the fact that moderate and above areas are generally required through the ROP/RFP requirements to achieve an average of 3% reduction per year until they attain the NAAQS. The state must specify the type of contingency measures, the quantity of emissions reductions, and show that the measures can be implemented with no further rulemaking and minimal further action by the state.

For the failure-to-attain 1997 8-hour ozone contingency measures plan, Texas identified contingency measures that were adopted for the 1-hour ozone standard but never implemented. The contingency measures include State VOC rules approved by EPA in the Texas SIP for Offset Lithographic Printing at 30 TAC 115.449(c) (approved April 6, 2000, 65 FR 18003, revised July 16, 2001, 66 FR 36917), Degassing or Cleaning of Stationary, Marine, and Transport Vessels at section 115.549(b) (approved January 26, 1999, 64 FR 03841, revised February 27, 2008, 73 FR 10380) and Petroleum Dry Cleaning at section 115.559(a) (approved January 26, 1999, 64 FR 03841, revised February 27, 2008, 73 FR 10383). Our review of the May 30, 2007 SIP revision indicates that the failure-to-attain 1997 8-hour ozone contingency measures plan does not identify sufficient measures to achieve additional emissions reductions of 3% of the emissions in the adjusted 1999 base year emissions inventory, as required by our interpretation of the Act (see EPA's General Preamble at 57 FR 13498, 13510). Rather, the identified controls would only achieve 0.35% reduction.

Texas provided a commitment letter, which identifies contingency measures that the State will recommend for adoption through rulemaking and has committed to submit to EPA no later than March 1, 2009 as a SIP revision (see letter of June 13, 2008, in the docket) adopted rules that could achieve the additional reduction, providing a total of 3%, for the failure-to-attain contingency measure plan. The commitment letter states that Texas will adopt and submit no later than March 1, 2009 to EPA as a SIP revision, subject to the SIP public participation requirements and commission approval, a revised failure-to-attain 1997 8-hour ozone contingency measures plan that would include the Federal Motor Vehicle Control programs (FMVCP) occurring after the 2009 ozone season, in addition to the already-identified VOC rules described above. The FMVCP requires controls on both on- and non-road motor vehicles, providing emissions reductions as the fleet is replaced with newer vehicles (turns over). Texas' April 23, 2008 letter estimates projected emissions reductions attributed to this 2009–2010 fleet turnover from mobile sources occurring after the 2009 ozone season to be approximately 20.78 tpd of NO_X and 4.86 tpd of VOCs. The emissions inventory from this attainment demonstration SIP submittal, which uses 1999 as the base year, estimates emissions from anthropogenic sources are 754.56 tpd NO_X and 520.08 tpd VOC. Texas projects the 2009–2010 fleet turnover reductions alone will provide a 2.75% reduction of NO_X and a 0.93% reduction of VOC from the 1999 base year emissions. Texas also estimates that the contingency measures identified in the May 30, 2007 submittal provide a cumulative total of 1.8 tpd VOC reductions.

We have reviewed the May 30, 2007, SIP revision and the State's commitment and determined that the VOC and fleet turnover control measures identified are specific and that the VOC measures are enforceable because they are approved into the SIP and will become effective if the area fails to attain the standard by the applicable date. We have determined that the quantity of emissions reductions exceeds 3% of the 1999 base year emissions inventory based upon Texas' estimate that the 2009–2010 fleet turnover reductions will provide a 2.75% reduction of NO_X and a 0.93% reduction of VOC from the 1999 inventory. We agree with the State's projected emissions reductions. We believe Federal measures already scheduled for implementation and not relied upon in the attainment demonstration are appropriate contingency measures (Phase 2 Rule, 70 FR 71612, 71651).

Therefore, we are proposing that the contingency measures identified in the SIP submittal and in the State's commitment letter would meet Federal requirements for a 1997 8-hour ozone failure-to-attain contingency measures plan. We are proposing to approve the 1997 8-hour ozone failure-to-attain contingency measures plan for the DFW area, contingent upon the State's adoption of and submittal to EPA, of a new failure-to-attain contingency measures plan that includes the above-described VOC rules and the additional described control measure, fleet turnover from mobile sources after the 2009 ozone season. If Texas submits a revised failure-to-attain 1997 8-hour ozone contingency measures plan that includes the specifically identified measures, i.e., the VOC rules and fleet turnover after 2009 from mobile sources, we will move forward with a final full approval of the 1997 8-hour ozone failure-to-attain contingency measure SIP for the DFW area. Any comments concerning whether these four measures are sufficient to meet the failure-to-attain contingency measure requirement should be raised at this time. EPA does not plan to provide an additional opportunity for comment unless the State modifies these measures or submits a failure-to-attain contingency

measures plan relying on other measures. Because the failure-to-attain contingency measure SIP is a necessary component of the attainment demonstration, if Texas fails to submit such a SIP revision, we cannot move forward with a final conditional approval action on the DFW 1997 8-hour ozone attainment demonstration SIP, as we have also proposed in this notice.

G. Attainment Motor Vehicle Emission Budgets (MVEBs)

The 1997 8-hour ozone attainment demonstration SIP must include MVEBs for transportation conformity purposes. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. It is a process required by section 176(c) of the Act for ensuring that the effects of emissions from all on-road sources are consistent with attainment of the standard. EPA's transportation conformity rules at 40 CFR 93 require that transportation plans and related projects result in emissions that do not exceed the MVEB established in the SIP. The attainment year established in the DFW 1997 8-hour ozone attainment demonstration SIP is the calendar year of the final ozone season for determining attainment, which is 2009. See 40 CFR 93.118(b).

The attainment MVEB is the level of total allowable on-road emissions established by the control strategy implementation plan. Ozone attainment demonstrations must include the estimates of motor vehicle VOC and NO_X emissions that are consistent with attainment, which then act as a budget or ceiling for the purposes of determining whether transportation plans, programs, and projects conform to the attainment demonstration SIP. In this case, the attainment MVEBs set the maximum level of on-road emissions that can be produced in 2009, when considered with emissions from all other sources, which demonstrate attainment of the 1997 8-hour ozone NAAQS.

The 2009 attainment MVEBs established by this plan and that the EPA is proposing to incorporate into the DFW SIP are listed in Table 12:

TABLE 12.—2009 DFW ATTAINMENT MOTOR VEHICLE EMISSIONS BUDGETS (TPD)

Pollutant	2009
NO_X	186.81
VOC	99.09

We found the 2009 attainment MVEBs (also termed transportation conformity budgets) ''adequate'' and on June 28, 2007, the availability of these budgets was posted on EPA's Web site for the purpose of soliciting public comments. The comment period closed on July 30, 2007, and we received no comments. On March 21, 2008, we published the Notice of Adequacy Determination for these attainment MVEBs (73 FR 15152). Once determined adequate, these attainment MVEBs must be used in future DFW transportation conformity determinations.

The attainment budget represents the on-road mobile source emissions that have been modeled for the attainment demonstration. The budget reflects all of the on-road control measures in that demonstration. We believe that the MVEBs are consistent with all applicable SIP requirements and thus are proposing to approve adoption of the 2009 attainment MVEBs into the DFW 1997 8-hour ozone attainment demonstration SIP. All future transportation improvement programs, projects and plans for the DFW area will need to show conformity to the budgets in this plan.

H. Section 110(l) Analysis

Section 110(l) of the Act precludes EPA from approving a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and RFP (as defined in section 171), or any other applicable requirement of the Act. EPA interprets section 110(l) to allow substitution of a control measure in the SIP with a different control measure if the new measure will accomplish new and contemporaneous emissions reductions to offset the loss of the control measure being removed from the SIP. We also ensure that air quality will not degrade and that progress toward attainment will continue as EPA promulgates revised ozone standards.

As of 2006, the DFW area is monitoring attainment of the 1-hour ozone standard (now revoked. See Phase I Rule, 69 FR 23951). Measures from the 2000 1-hour SIP have been approved into the SIP and remain enforceable, with one exception. The Texas Legislature caused the statewide residential water heater emission standards to be relaxed in 2005 due to the inability of water heater manufacturers to supply units compliant with the rule. Therefore, the more stringent rule was never implemented. TCEQ requested that this measure be revised in the SIP and substituted with new and contemporaneous reductions of NO_X emissions from the TERP program that were in excess of those required by the April 27, 2005 DFW 5% IOP SIP. EPA agrees with the State rationale. EPA and the State projected NO_X reductions of 0.5 tpd from the State's residential water heater rule in the DFW area. The reductions from the TERP program in the DFW 5% IOP SIP were projected to provide 22.2 tpd in NO_X emissions reductions, or an excess of 4.23 tpd over the 5% IOP. The actual NO_X emissions reductions achieved however, were 18.45 tpd ($22.2 - 18.45 = 3.75$ tpd). Even with this change in the projected emissions reductions of NO_X in the IOP Plan, however, the projected NO_X reductions used to make up for the revision of the residential water heater rule are nearly met ($4.23 - 3.75 = 0.48$). And, per the discussion in section III–C above, the shortfall of 0.02 tpd needed to make up for the revised residential water heater rule is projected to occur.

In summary, the State adopted the water heater rule for the purpose of contributing to attainment of the 1-hour NAAQS. The emission standards in the rule were made less stringent due to technical infeasibility. The DFW area has monitored attainment of the 1-hour NAAQS. TCEQ substituted new and contemporaneous reductions of NO_X emissions from the TERP program. In addition, Texas has demonstrated attainment of the 1997 8-hour NAAQS using the revised water heater rule. We therefore are proposing to find that the revised State rule for residential water heaters meets section 110(l) of the Act for the DFW area.

VI. Reasonably Available Control Technology (RACT)

Sections 172(c)(1) and 182 of the Act require areas that are classified as moderate or above for ozone nonattainment to adopt Reasonably Available Control Technology (RACT) requirements for sources that are subject to Control Techniques Guidelines (CTGs) issued by EPA and for ''major sources'' of VOC and NO_X, which are ozone precursors. See 42 U.S.C. sections 7502(c)(1) and 7511a(b) and (f). RACT is defined as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762,

September 17, 1979). A CTG provides information on the available controls for a source category and provides a ''presumptive norm'' RACT. In this action, EPA is addressing RACT for VOCs in the DFW area for the 1997 8-hour ozone standard, and for the 1-hour standard; RACT for NO_X in DFW will be addressed in a separate rulemaking.

EPA published the 8-hour ozone designations and the Phase 1 Rule for implementing the 8-hour ozone standard and the designations for the 8-hour ozone standard on April 30, 2004 (69 FR 23858 and 69 FR 23951, respectively). At the time of designation, DFW was a nonattainment area for the 1-hour ozone standard and had two outstanding 1-hour ozone obligations: (1) The area did not have an approved 1-hour ozone attainment demonstration; and (2) the area did not have approved RACT requirements for VOC emissions (VOC RACT). All other 1-hour requirements were approved. For additional information, see the TSD.

According to EPA's Phase 2 Rule (70 FR 71612, November 29, 2005), areas classified as moderate nonattainment or higher must submit a demonstration, as a revision to the SIP, that their current rules fulfill 1997 8-hour ozone RACT requirements for all CTG categories and all major non-CTG sources. Since DFW is classified as moderate for the 1997 8-hour ozone standard, for purposes of meeting the 8-hour RACT requirement, the DFW area must demonstrate RACT level controls for sources covered by a CTG document, and for each major non-CTG source (100 tpy or greater potential to emit). The Phase 2 Rule, section IV.G states, in part, that where a RACT SIP is required, State SIPs implementing the 8-hour standard generally must assure that RACT is met, either through a certification that previously required RACT controls represent RACT for 8-hour implementation purposes or through a new RACT determination. The RACT SIP submitted by TCEQ provides an analysis which demonstrates how the DFW area meets RACT requirements for the 1997 8-hour ozone NAAQS. See the TSD for more information about the State's VOC RACT analysis for DFW.

In addition, the Phase 1 Rule provides that 1-hour ozone nonattainment areas are required to adopt and implement ''applicable requirements'' according to the area's classification under the 1-hour ozone standard (see 40 CFR 51.905(a)(i)). The DFW area was still classified as a serious nonattainment area at the time of the 8-hour designation and an outstanding ''applicable requirement'' for the DFW area is VOC RACT. In the four core counties, which comprised the 1-hour ozone nonattainment areas, Texas previously adopted rules to address RACT requirements for all source categories covered by EPA CTGs, and to address major sources at the moderate area major source threshold of 100 tpy. The EPA approved these rules as meeting VOC RACT for a moderate 1-hour ozone nonattainment area (60 FR 12438). The reclassification of the area from moderate to serious for the 1-hour ozone standard, on February 18, 1998 (63 FR 8128), required Texas to ensure that RACT was in place on non-CTG sources down to 50 tpy. Texas submitted a SIP to address this requirement and we proposed to approve the SIP submission as meeting the 1-hour ozone serious area VOC RACT requirements for the DFW 1-hour ozone nonattainment area on January 18, 2001 (66 FR 4756). Although we received no comments on that proposal, we never took final action.

We are re-opening the comment period on that proposed action for 1-hour ozone serious area RACT requirements, and intend to take final action on it in the same rulemaking where we finalize action on the VOC RACT 1997 8-hour ozone proposal. If these proposed actions are finalized, the DFW area will have fulfilled all of its outstanding 1-hour ozone VOC RACT obligations, and met the 1997 8-hour ozone VOC RACT requirements.

The State's submittal for the DFW area for meeting the 1997 8-hour ozone RACT requirement included, among other things, the following two components:

(a) A list of all CTG or ACT source categories which matched those categories with one or more corresponding State rules which implements RACT and the affected sources in the nine counties,[9] and

(b) An analysis of RACT for all major sources in the nine counties that are not covered by a CTG or ACT and how these are controlled to meet RACT.

Appendices to the SIP submittal identified the sources and the currently applicable controls, which EPA had previously approved as meeting RACT for the 1-hour standard, and included an analysis of whether additional RACT controls were required for both CTG and non-CTG sources.

To ensure RACT was in place for all major sources, the State first searched its permitting database to identify all sources that emit or have the potential to emit at least 50 tpy of VOC in the DFW 8-hour ozone nonattainment area. The State then provided a list of each major source in a source category covered by a CTG/ACT and the State VOC RACT Rule applicable to such major sources. The State analyzed whether the existing CTG/ACT VOC RACT rules should be more stringent. Second, the State listed potential major sources in source categories possibly not covered by a CTG/ACT, and the State provided further technical analysis for these.

The State's RACT SIP analysis was available for public comment prior to adoption by the State. EPA evaluated the following elements of TCEQ's VOC RACT SIP submittal for the DFW Area:

- State Rules Addressing VOC RACT Requirements for Sources Covered by a CTG/ACT.
- Potential Major VOC Emissions Sources possibly not covered by a CTG/ACT.

A list of documents used to support our review and evaluation is available in the TSD.

The State's submittal included a table of all of the CTG and ACT documents that have been issued by EPA and the corresponding State Rules, contained at 30 TAC 115, which establish RACT rules for the sources identified in each CTG or ACT. For two of the VOC source categories (shipbuilding and rubber tire manufacturing), TCEQ provided a negative declaration certifying that there are no sources of VOCs for those categories in the DFW area. Texas concluded that all other CTG sources currently have RACT-level controls.

Since RACT can change over time as new technology becomes available or the cost of existing technology decreases, it is important that states review new technologies. As clarified in EPA's Phase 2 Rule, ''States and other interested parties should consider available information that may supplement the CTG and ACT documents'' (70 FR 71655). In developing this submittal, TCEQ reviewed new technologies and current control technologies and methodologies implemented as RACT in other ozone nonattainment areas. TCEQ found that

[9] An earlier VOC-related Texas rulemaking was adopted on November 15, 2006, and submitted to EPA on December 13, 2006, as a SIP revision, which extended VOC control requirements to facilities located in Ellis, Johnson, Kaufman, Parker, and Rockwall counties. This rulemaking subjected affected VOC sources in the five counties mentioned above, to the same emissions limitation, control, monitoring, testing, recordkeeping, and reporting requirements in effect in the four core counties. As a result of this action, which EPA is proposing to approve in a separate action, these new VOC control requirements will be consistent for all nine counties in the DFW area. Approval of VOC RACT for the DFW area is contingent upon final approval of this related rulemaking, which extends VOC controls from the four core counties to the five additional counties.

Texas' VOC RACT rules for CTG/ACT covered sources are consistent with or more stringent than the current control technologies and methodologies implemented in other ozone nonattainment areas, which were determined to fulfill RACT requirements. EPA agrees that the VOC controls in place for DFW meet RACT. Please see the TSD for additional information and analysis.

As previously discussed, as part of addressing moderate area 1-hour ozone requirements, EPA approved the Texas VOC rules implementing RACT for all required CTG or ACT categories in the four core counties and for major sources emitting 100 tpy or more VOC. The State extended the previously approved moderate provisions to the five new nonattainment counties, added as part of the DFW 1997 8-hour ozone nonattainment area. Additionally, the State had adopted for the four core counties, which comprised the 1-hour nonattainment area, and we had proposed to approve RACT rules for all sources emitting 50 tpy or more VOC as part of addressing the 1-hour serious area requirements.

For the CTG/ACT categories, based on EPA's review of the State submittal, we conclude that the VOC controls in place meet RACT. EPA finds that a negative declaration for two categories (shipbuilding and rubber tire manufacturing) in the DFW area is appropriate. Based on (1) this analysis, and (2) final approval of the rule extending the CTG VOC controls throughout the 9-county DFW area (see footnote 9), EPA believes the DFW area has met all the applicable requirements to have VOC RACT rules for all CTG sources.

The State's submittal also included a list of all potential major sources of VOC emissions within source categories possibly not covered by a CTG (or ACT) in the DFW area, together with a demonstration of how each source was determined to fulfill RACT requirements. Given its classification as a moderate ozone nonattainment area, TCEQ was required to ensure RACT is in place for all sources that emit or have the potential to emit at least 100 tpy (section 182(d) of the Act). TCEQ looked at sources with a potential to emit as low as 50 tpy of VOC to ensure RACT was in place for major sources not covered by a CTG or ACT. The TCEQ's analysis shows how each major source meets VOC RACT based on currently applicable controls and why no additional RACT controls should be required.

The State identified 36 potentially major sources of VOC emissions in the DFW area, based on the 2002 emissions inventory. Of these 36 potential sources, 20 were determined by TCEQ to be covered by rules that meet RACT, and one was shut down in 2004 (please see the TSD). Based upon further analysis of the remaining 15 sources, the State determined that three of the sources were not major sources. Their allowable emissions are less than 100 tpy and therefore are not subject to the RACT requirements; these are two asphalt roofing companies and a brick kiln.

Eleven of the 15 sources are major sources, but fall within a source category covered by the State's VOC RACT rules. One of the 11 sources, Rock-Tenn Corporation, is subject to the State's VOC RACT paper coating rule. The other 10 sources are subject to the State's VOC RACT vent gas rule: Dartco, Chaparral Steel, Hensley Industries, Johns Manville International, Owens-Corning Waxahachie, Exide, Ex-Tex LaPorte LP, TXU Generation Co, Midlothian Energy, and Holcim. The only comment the State received regarding the need for additional VOC RACT controls was that a thermal oxidizer should be used to control VOC emissions from the cement kiln. However, a cost analysis of the use of thermal oxidizers shows the cost to be beyond RACT. Detailed cost information is available in the TSD. The TCEQ's analysis shows that no additional RACT controls are required.

The remaining source out of the original 15 was determined to be major and not within a source category controlled by the State's VOC RACT rules: A beverage alcohol production facility (Miller Brewing). Most of this facility's VOC emissions are fugitive emissions due to product loss in the packaging area. In its RACT determination for Miller Brewing Co, Texas stated, ''VOC emissions are controlled per BACT in NSR Permit No. 3133. Additional control for RACT is not economically feasible'' (TCEQ Appendix J). These types of sources have an economic incentive to operate efficiently, in order to reduce leakage of product, with the result in minimization of VOC emissions. Therefore, EPA is proposing to find that this beverage alcohol production facility meets RACT.

EPA is proposing to find that the DFW 1997 8-hour ozone nonattainment area SIP meets the VOC RACT requirements based on current applicable rules for all sources addressed by a CTG and all major non-CTG sources. EPA proposes to approve the State's submittals demonstrating that the DFW area meets the VOC RACT requirements for the 1-hour ozone standard and the 1997 8-hour ozone standard.

VII. Proposed Action

We propose to conditionally approve the 1997 8-hour ozone attainment demonstration SIP revision for the DFW 1997 8-hour ozone nonattainment area, submitted by the State on May 30, 2007, and supplemented on April 23, 2008. Our proposed approval of the 8-hour DFW SIP is conditioned on Texas adopting and submitting to EPA prior to March 2009, a complete SIP revision to limit the use of DERCs, beginning March 1, 2009. Our proposed conditional approval is contingent upon Texas submitting the failure-to-attain contingency measures plan SIP as specified in this proposal prior to the time EPA takes final action on the attainment demonstration SIP. We are proposing to find that all RACM for VOC and NO_X have been implemented in the DFW area. We found the attainment MVEBs to be adequate on March 21, 2008 (73 FR 15152) and propose to approve the 2009 attainment MVEBs into the DFW SIP. We are proposing to approve into the DFW SIP the VMEP and TCMs submitted on May 30, 2007. We cannot finalize conditional approval of the DFW 1997 8-hour ozone attainment demonstration SIP unless and until (1) the State meets the contingency regarding the failure-to-attain contingency measure requirement as specified in this proposal, and (2) we have approved the DFW RFP Plan and all of the control strategies relied upon in the attainment demonstration. The control strategies are specifically listed below:

a. The DFW area's RFP plan, associated MVEBs, and RFP contingency measures;

b. The April 9, 2003, Alcoa Federal Consent Decree;

c. The rich burn gas-fired engine rule in the 33 counties east of DFW;

d. The DFW major source rule;

e. The DFW minor source rule;

f. The DFW gas-fired engine rule;

g. The DFW EGUs rule;

h. The DFW non-EGUs rule;

i. The Auxiliary steam boilers in the 5 counties;

j. The Stationary gas turbines rule in the 5 counties;

k. The VOC Rules adopted on 11/15/06 by TCEQ;

l. The DFW Energy Efficiencies Program;

m. The Cement kiln rules;

n. The finding that DFW is meeting RACM;

o. The VMEP;

p. The TCMs; and

q. The failure-to-attain Contingency Measures Plan, revised as specifically described today.

r. An enforceable mechanism to limit the use of DERCs, as specifically described today.

We are taking action on a number of the items listed above in separate **Federal Register** actions.

We are proposing to approve that VOC rules implemented in all nine counties meet the RACT requirements. These rules will result in emissions reductions needed to help the DFW area attain the 8-hour NAAQS for ozone.

EPA is proposing to approve and conditionally approve these various plans in accordance with section 110 and part D of the Act and EPA's regulations.

VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 1, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E8–15805 Filed 7–11–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–RO3–OAR–2008–0068; FRL–8691–4]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Control of Stationary Combustion Turbine Electric Generating Unit Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision pertains to controlling nitrogen oxides emissions from stationary combustion turbine electric generating units. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 13, 2008.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–RO3–OAR–2008–0068 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. E-mail: fernandez.cristina@epa.gov.

C. *Mail:* EPA–RO3–OAR–2008–0068, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–RO3–OAR–2008–0068. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or

in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Gerallyn Duke, (215) 814–2084, or by e-mail at *Duke.Gerallyn@epa.gov*.

SUPPLEMENTARY INFORMATION: On September 11, 2007, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted to EPA a revision to its SIP for Regulation 1148—Control of Nitrogen Oxides (NO_X) Emissions from Stationary Combustion Turbine Electric Generating Units.

I. Background

DNREC has identified large stationary combustion turbines (CTs) as significant contributors to the release of NO_X, which is a precursor to the formation of ground-level ozone. Ozone poses a significant threat to human health especially to the young, the elderly, or anyone with impaired ability to breathe, as ozone harms the lungs.

CTs normally operate at peak times for the demand for electricity. In Delaware, peak times are in the summer and coincide with hot and humid weather conditions that are conducive to the formation of ozone. By reducing NO_X emissions from CTs during the ozone season, the likelihood that Delaware's air quality will exceed the federal standards for ozone is reduced. This regulation will affect six existing CTs in Delaware, each with an installed capacity of 1 megawatt (MW), none of which currently operate with any NO_X pollution control equipment. These six CTs emitted 2.21 tons of NO_X per day in 2002, which is the most recent year for Delaware's emissions inventory. DNREC has determined that use of water injection technology would reduce NO_X emissions by approximately 40 percent, or by 0.88 tons per day. Water injection reduces the combustion temperature and consequently reduces NO_X emissions. Delaware is part of the Philadelphia-Wilmington-Atlantic City ozone nonattainment area and it must take regulatory actions to improve air quality to meet the 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) by 2010. This regulation is one of many regulatory actions that DNREC has undertaken in recent years as part of its SIP which is a federal requirement to show that Delaware's air quality will attain compliance with the 8-Hour Ozone NAAQS by 2010. No inconsistencies or inadequacies regarding EPA policy and the Clean Air Act have been identified.

II. Summary of SIP Revision

Rregulation 1148—Control of NO_X Emissions from Stationary Combustion Turbine Electric Generating Units requires that an owner or operator of an existing stationary combustion turbine electric generating unit located in Delaware with a base-load nameplate capacity of 1 MW or greater must, by May 1, 2009, either demonstrate that the existing stationary combustion turbine generating unit meets the emission limits listed below or must install NO_X emission controls designed to meet these limits: For CTs that burn gaseous fuel—42 parts per million volume (ppmv), corrected to 15 percent O_2 dry basis NO_X, and for CTs that burn liquid fuel—88 ppmv NO_X. Design of these limits was based on anticipated NO_X emissions if water injection pollution control equipment were installed.

The six CTs affected by this regulation operate without any NO_X pollution control equipment, although they are subject to regulations designed to control NO_X emissions. DNREC determined that the six sources could achieve significant reductions in their NO_X emissions through the use of water injection equipment. Water injection is a proven, feasible technology that has been used in other states to reduce NO_X emissions.

This revision will reduce NO_X emissions from CTs by 40 percent, or by 0.88 tons per day to approximately 1.33 tons per day. Such a reduction will significantly improve air quality, particularly on days when CTs normally operate, *i.e.*, hot humid days and when weather conditions are conducive to forming ground-level ozone, and is one of the many regulatory steps taken to allow DNREC to attain the NAAQS by 2010.

III. Proposed Action

EPA is proposing to approve the Delaware SIP revision for Control of Stationary Combustion Turbine Electric Generating Unit Emissions, which was submitted on September 11, 2007. This SIP revision will have a beneficial effect on air quality in the Delaware portion of the Philadelphia—Wilmington—Atlantic City ozone nonattainment area. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed approval of Delaware's Stationary Combustion Turbine Engine emissions rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country

located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: July 1, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E8–16018 Filed 7–11–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 59

[EPA–HQ–OAR–2008–0411; FRL–8689–5]

RIN 2060–AP01

Consumer and Commercial Products: Control Techniques Guidelines in Lieu of Regulations for Miscellaneous Metal Products Coatings, Plastic Parts Coatings, Auto and Light-Duty Truck Assembly Coatings, Fiberglass Boat Manufacturing Materials, and Miscellaneous Industrial Adhesives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; proposed determination and availability of draft control techniques guidelines.

SUMMARY: Pursuant to section 183(e)(3)(C) of the Clean Air Act, EPA proposes to determine that control techniques guidelines will be substantially as effective as national regulations in reducing emissions of volatile organic compounds in ozone national ambient air quality standard nonattainment areas from the following five product categories: Miscellaneous metal products coatings, plastic parts coatings, auto and light-duty truck assembly coatings, fiberglass boat manufacturing materials, and miscellaneous industrial adhesives. Based on this determination, we may issue control techniques guidelines in lieu of national regulations covering these product categories. We have prepared draft control techniques guidelines for the control of volatile organic compound emissions from each of the product categories covered by this proposed determination. Once finalized, these control techniques guidelines will provide guidance to the States concerning EPA's recommendations for reasonably available control technology-level controls for these product categories. We further propose to take final action to list the five Group IV consumer and commercial product categories addressed in this notice pursuant to Clean Air Act section 183(e).

DATES: *Comments:* Written comments on this proposed action must be received by August 13, 2008, unless a public hearing is requested by July 24, 2008. If a hearing is requested on this proposed action, written comments must be received by August 28, 2008. We are also soliciting written comments on the draft control techniques guidelines (CTG), and those comments must be submitted within the comment period for this proposed determination.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing concerning this proposed determination by July 24, 2008, we will hold a public hearing on July 29, 2008. The substance of any such hearing will be limited solely to EPA's proposed determination under Clean Air Act (CAA) section 183(e)(3)(C) that the CTGs covering the five Group IV product categories will be substantially as effective as regulations in reducing volatile organic compound (VOC) emissions in ozone nonattainment areas. Accordingly, if a commenter has no objection to EPA's proposed determination under CAA section 183(e)(3)(C), but has comments on the substance of a draft CTG, the commenter should submit those comments in writing.

ADDRESSES: Submit your comments, identified by applicable docket ID number, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Comments concerning this proposed Determination should be sent to: Consumer and Commercial Products, Group IV—Determination to Issue Control Techniques Guidelines in Lieu of Regulations, Docket No. EPA–HQ–OAR–2008–0411.

Comments concerning any draft CTG should be sent to the applicable docket, as noted below: Consumer and Commercial Products—Miscellaneous Metal and Plastic Parts Coatings, Docket No. EPA–HQ–OAR–2008–0412; Consumer and Commercial Products—Auto and Light-Duty Truck Assembly Coatings, Docket No. EPA–HQ–OAR–2008–0413; Consumer and Commercial Products—Fiberglass Boat Manufacturing Materials, Docket No. EPA–HQ–OAR–2008–0415; or Consumer and Commercial Products—Miscellaneous Industrial Adhesives, Docket No. EPA–HQ–OAR–2008–0460, Environmental Protection Agency, EPA Docket Center, Mailcode 6102T, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Comments concerning the draft revision of the Automobile Topcoat Protocol, which is referenced in the draft CTG for Auto and Light-Duty Truck Coatings, should be sent to Consumer and Commercial Products—Auto and Light-Duty Truck Assembly Coatings, Docket No. EPA–HQ–OAR–2008–0413. Please include a total of two copies.

- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to the applicable docket. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Public Hearing. If a public hearing is held, it will be held at 10 a.m. on July 29, 2008 at Building C on the EPA campus in Research Triangle Park, NC,

or at an alternate site nearby. Persons interested in presenting oral testimony must contact Ms. Joan C. Rogers, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711, *telephone number:* (919) 541–4487, *fax number:* (919) 541–3470, *e-mail address: rogers.joanc@epa.gov,* no later than July 24, 2008. Persons interested in attending the public hearing must also call Ms. Rogers to verify the time, date, and location of the hearing. If no one contacts Ms. Rogers by July 24, 2008 with a request to present oral testimony at the hearing, we will cancel the hearing.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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 EPA Docket Center, Public Reading Room, 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: For information concerning the CAA section 183(e) consumer and commercial products program, contact Mr. Bruce Moore, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711, *telephone number:* (919) 541–5460, *fax number:* (919) 541–3470, *e-mail address: moore.bruce@epa.gov.* For further information on technical issues concerning this proposed determination and draft CTG for miscellaneous metal and plastic parts coatings, or for fiberglass boat manufacturing materials, contact: Ms. Kaye Whitfield, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711, *telephone number:* (919) 541–2509, *fax number:* (919) 541–3470, *e-mail address: whitfield.kaye@epa.gov.* For further information on technical issues concerning this proposed determination and draft CTG for auto and light-duty truck assembly coatings or the draft revision of the Automobile Topcoat Protocol, contact: Mr. Dave Salman, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Research Triangle Park, North Carolina 27711, *telephone number:* (919) 541–0859, *fax number:* (919) 541–3470, *e-mail address: salman.dave@epa.gov.* For further information on technical issues concerning this proposed determination and draft CTG for miscellaneous industrial adhesives, contact: Ms. Martha Smith, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711, *telephone number:* (919) 541–2421, *fax number:* (919) 541–3470, *e-mail address: smith.martha@epa.gov.*

SUPPLEMENTARY INFORMATION:

Entities Potentially Affected by This Action. The entities potentially affected by this action include industrial facilities that use the respective consumer and commercial products covered in this action as follows:

Category	NAICS code [a]	Examples of affected entities
Miscellaneous metal and plastic parts coatings.	331, 332, 333, 334, 336, 482, 811	Facilities that manufacture and repair fabricated metal, machinery, computer and electronic equipment, transportation equipment, rail transportation equipment.
Auto and light-duty truck assembly coatings.	336111, 336112, 336211	Automobile and light-duty truck assembly plants, producers of automobile and light-duty truck bodies.
Fiberglass boat manufacturing materials.	336612	Boat building facilities.
Miscellaneous industrial adhesives	316, 321, 326, 331, 332, 333, 334, 336, 337, 339, 482, 811.	Facilities that manufacture and repair leather and allied products, wood products, plastic and rubber products, fabricated metal, machinery, computer and electronic equipment, transportation equipment, furniture and related products, rail transportation equipment, and facilities involved in miscellaneous manufacturing.
Federal Government		Not Affected.
State, local and tribal government		State, local and tribal regulatory agencies.

[a] 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 affected by this action, you should examine the applicable industry description in sections II.A, III.A, IV.A, and V.A of this notice. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate EPA contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Preparation of Comments. Do not submit information containing CBI to EPA through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, *Attention:* Docket ID EPA–HQ–OAR–2008–0411, 0412, 0413, 0415, or 0460 (as applicable). Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR part 2.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this proposed action will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

Organization of this Document. The information presented in this notice is organized as follows:

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I. Background Information and Proposed Determination

A. The Ozone Problem

Ground-level ozone, a major component of smog, is formed in the atmosphere by reactions of VOC and oxides of nitrogen in the presence of sunlight. The formation of ground-level ozone is a complex process that is affected by many variables.

Exposure to ground-level ozone is associated with a wide variety of human health effects, as well as agricultural crop loss, and damage to forests and ecosystems. Controlled human exposure studies show that acute health effects are induced by short-term (1 to 2 hour) exposures (observed at concentrations as low as 0.12 parts per million (ppm)), generally while individuals are engaged in moderate or heavy exertion, and by prolonged (6 to 8 hour) exposures to ozone (observed at concentrations as low as 0.08 ppm and possibly lower), typically while individuals are engaged in moderate exertion. Transient effects from acute exposures include pulmonary inflammation, respiratory symptoms, effects on exercise performance, and increased airway responsiveness. Epidemiological studies have shown associations between ambient ozone levels and increased susceptibility to respiratory infection, increased hospital admissions and emergency room visits. Groups at increased risk of experiencing elevated exposures include active children, outdoor workers, and others who regularly engage in outdoor activities. Those most susceptible to the effects of ozone include those with preexisting respiratory disease, children, and older adults. The literature suggests the possibility that long-term exposures to ozone may cause chronic health effects (e.g., structural damage to lung tissue and accelerated decline in baseline lung function).

B. Statutory and Regulatory Background

Under section 183(e) of the CAA, EPA conducted a study of VOC emissions from the use of consumer and commercial products to assess their potential to contribute to levels of ozone that violate the national ambient air quality standards (NAAQS) for ozone, and to establish criteria for regulating VOC emissions from these products. Section 183(e) of the CAA directs EPA to list for regulation those categories of products that account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, from consumer and commercial products in areas that violate the NAAQS for ozone (i.e., ozone nonattainment areas), and to divide the list of categories to be regulated into four groups. EPA published the initial list in the **Federal Register** on March 23, 1995 (60 FR 15264). In that notice, EPA stated that it may amend the list of products for regulation, and the groups of product categories, in order to achieve an effective regulatory program in accordance with the EPA's discretion under CAA section 183(e).

EPA has revised the list several times. See 70 FR 69759 (November 17, 2005); 64 FR 13422 (March 18, 1999). Most recently, in May 2006, EPA revised the list to add one product category, portable fuel containers, and to remove one product category, petroleum dry cleaning solvents. See 71 FR 28320 (May 16, 2006). As a result of these revisions, Group IV of the list comprises five product categories: Miscellaneous metal products coatings, plastic parts coatings, auto and light-duty truck assembly coatings, fiberglass boat manufacturing materials, and miscellaneous industrial adhesives.[1]

Any regulations issued under CAA section 183(e) must be based on ''best available controls'' (BAC). CAA section 183(e)(1)(A) defines BAC as ''the degree of emissions reduction that the Administrator determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is achievable through the application of the most effective equipment, measures, processes, methods, systems or techniques, including chemical reformulation, product or feedstock substitution, repackaging, and directions for use, consumption, storage, or disposal.'' CAA section 183(e) also provides EPA with authority to use any system or systems of regulation that EPA determines is the most appropriate for the product category. Under these provisions, we have previously issued ''national'' regulations for autobody refinishing coatings, consumer products, architectural coatings,

[1] Pursuant to the court's order in *Sierra Club* v. *EPA*, 1:01–cv–01597–PLF (D.C. Cir., March 31, 2006), EPA must take final action on the product categories in Group IV by September 30, 2008.

portable fuel containers, and aerosol coatings.[2]

CAA section 183(e)(3)(C) further provides that we may issue a CTG in lieu of a national regulation for a product category where we determine that the CTG will be ''substantially as effective as regulations'' in reducing emissions of VOC in ozone nonattainment areas. The statute does not specify how we are to make this determination, but does provide a fundamental distinction between national regulations and CTG.

Specifically, for national regulations, CAA section 183(e) defines regulated entities as:

> (i) * * * manufacturers, processors, wholesale distributors, or importers of consumer or commercial products for sale or distribution in interstate commerce in the United States; or (ii) manufacturers, processors, wholesale distributors, or importers that supply the entities listed under clause (i) with such products for sale or distribution in interstate commerce in the United States.

Thus, under CAA section 183(e), a regulation for consumer or commercial products is limited to measures applicable to manufacturers, processors, distributors, or importers of the solvents, materials, or products supplied to the consumer or industry. CAA section 183(e) does not authorize EPA to issue national regulations that would directly regulate end-users of these products. By contrast, CTG are guidance documents that recommend reasonably available control technology (RACT) measures that States can adopt and apply to the end-users of products. This dichotomy (i.e., that EPA cannot directly regulate end-users under CAA section 183(e), but can address end-users through a CTG) created by Congress is relevant to EPA's evaluation of the relative merits of a national regulation versus a CTG.

C. Significance of CTG

CAA section 172(c)(1) provides that State implementation plans (SIPs) for nonattainment areas must include ''reasonably available control measures'' (RACM), including RACT, for sources of emissions. Section 182(b)(2) provides that States must revise their ozone SIP to include RACT for each category of VOC sources covered by any CTG document issued after November 15, 1990, and prior to the date of attainment.

EPA defines RACT as ''the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility,'' 44 FR 53761 (September 17, 1979). In subsequent notices, EPA has addressed how States can meet the RACT requirements of the CAA. Significantly, RACT for a particular industry is determined on a case-by-case basis, considering issues of technological and economic feasibility.

EPA provides States with guidance concerning what types of controls could constitute RACT for a given source category through issuance of a CTG. The recommendations in the CTG are based on available data and information and may not apply to a particular situation based upon the circumstances. States can follow the CTG and adopt State regulations to implement the recommendations contained therein, or they can adopt alternative approaches. In either event, States must submit their RACT rules to EPA for review and approval as part of the SIP process. EPA will evaluate the rules and determine, through notice and comment rulemaking in the SIP process, whether they meet the RACT requirements of the CAA and EPA's regulations. To the extent a State adopts any of the recommendations in a CTG into its State RACT rules, interested parties can raise questions and objections about the substance of the guidance and the appropriateness of the application of the guidance to a particular situation during the development of the State rules and EPA's SIP approval process.

We encourage States in developing their RACT rules to consider carefully the facts and circumstances of the particular sources in their States because, as noted above, RACT is determined on a case-by-case basis, considering issues of technological and economic feasibility. For example, a State may decide not to require 90 percent control efficiency at facilities that are already well controlled, if the additional emission reductions would not be cost-effective. States may also want to consider reactivity-based approaches, as appropriate, in developing their RACT regulations.[3] Finally, if States consider requiring more stringent VOC content limits than those recommended in the draft CTG, States may also wish to consider averaging, as appropriate. In general, the RACT requirement is applied on a short-term basis up to 24 hours.[4] However, EPA guidance permits averaging times longer than 24 hours under certain conditions.[5] The EPA's ''Economic Incentive Policy''[6] provides guidance on use of long-term averages with regard to RACT and generally provides for averaging times of no greater than 30 days. Thus, if the appropriate conditions are present, States may consider the use of averaging in conjunction with more stringent limits. Because of the nature of averaging, however, we would expect that any State RACT Rules that allow for averaging also include appropriate recordkeeping and reporting requirements.

By this action, we are making available four draft CTGs that cover the five product categories in Group IV of the CAA section 183(e) list (miscellaneous metal products coatings and plastic parts coatings are addressed in one draft CTG referred to as ''miscellaneous metal and plastic parts coatings''). These CTGs are guidance to the States and provide recommendations only. A State can develop its own strategy for what constitutes RACT for these five product categories, and EPA will review that strategy in the context of the SIP process and determine whether it meets the RACT requirements of the CAA and its implementing regulations.

Finally, CAA section 182(b)(2) provides that a CTG issued after 1990 specify the date by which a State must submit a SIP revision in response to the CTG. In the draft CTGs at issue here, EPA provides that States should submit their SIP revisions within one year of the date that the CTGs are finalized.

D. General Considerations in Determining Whether a CTG Will Be Substantially as Effective as a Regulation

CAA section 183(e)(3)(C) authorizes EPA to issue a CTG in lieu of a regulation for a category of consumer and commercial products if a CTG ''will be substantially as effective as regulations in reducing VOC emissions''

[2] See 63 FR 48792, 48819, and 48848 (September 11, 1998); 72 FR 8428 (February 26, 2007); and 73 FR 15604 (March 24, 2008).

[3] ''Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans,'' 70 FR 54046 (September 13, 2005).

[4] See, e.g., 52 FR at 45108, col. 2, ''Compliance Periods'' (November 24, 1987). ''VOC rules should describe explicitly the compliance timeframe associated with each emission limit (e.g., instantaneous or daily). However, where the rules are silent on compliance time, EPA will interpret it as instantaneous.''

[5] Memorandum from John O'Connor, Acting Director of the Office of Air Quality Planning and Standards, January 20, 1984, ''Averaging Times for Compliance with VOC Emission Limits–SIP Revision Policy.''

[6] ''Improving Air Quality with Economic Incentive Programs, January 2001,'' available at *http://www.epa.gov/region07/programs/artd/air/policy/search.htm.*

in ozone nonattainment areas. The statute does not specify how EPA is to make this determination.

On July 13, 1999 (64 FR 37773), EPA issued a final determination pursuant to CAA section 183(e)(3)(C), concluding that CTGs for wood furniture coatings, aerospace coatings, and shipbuilding and repair coatings were substantially as effective as national regulations in reducing emissions of VOC from these products in areas that violate the NAAQS for ozone. On October 5, 2006 (71 FR 58745), EPA issued a similar final determination for flexible packaging printing materials, lithographic printing materials, letterpress printing materials, industrial cleaning solvents, and flat wood paneling coatings. Most recently, on October 9, 2007 (72 FR 57215), EPA issued a similar final determination for paper, film, and foil coatings; metal furniture coatings; and large appliance coatings. Recognizing that the statute does not specify any criteria for making a determination under CAA section 183(e)(3)(C), EPA, in 1999, 2006, and 2007, considered several relevant factors, including: (1) The product's distribution and place of use; (2) the most effective entity to target to control emissions—in other words, whether it is more effective to achieve VOC reductions at the point of manufacture of the product or at the point of use of the product; (3) consistency with other VOC control strategies; and (4) estimates of likely VOC emission reductions in ozone nonattainment areas which would result from the regulation or CTG. EPA believes that these factors are useful for evaluating whether the rule or CTG approach would be best from the perspective of implementation and enforcement of an effective strategy to achieve the intended VOC emission reductions. EPA believes that in making these determinations, no single factor is dispositive. On the contrary, for each product category, we must weigh the factors and make our determination based on the unique set of facts and circumstances associated with that product category. For purposes of making this determination, we analyzed the components of the draft CTGs for the product categories at issue and compared the draft CTGs to the types of controls and emission strategies possible through a regulation. As we explained in 1999, it would be unreasonable for EPA, in effect, to have to complete both the full rulemaking and full CTG development processes before being able to make a determination under CAA section 183(e)(3)(C) validly. We believe that it is possible for the EPA to make a determination between what a rule might reasonably be expected to achieve versus what a CTG might reasonably be expected to achieve, without having to complete the entire rulemaking and CTG processes. To conclude otherwise would result in the unnecessary wasting of limited time and resources by the EPA and the stakeholders participating in the processes. Moreover, such an approach would be directly contrary to CAA section 183(e)(3)(C), which authorizes EPA to issue a CTG in lieu of a regulation if it determines that the CTG ''will be substantially as effective as'' a regulation in reducing VOC emissions in ozone nonattainment areas.

With regard to the five product categories at issue here, EPA notes that it does not have reliable quantitative data that would enable it to conduct a ton-by-ton comparison of the likely emission reductions associated with a national regulation versus a CTG. Although we conducted such a comparative analysis in 1999 for the product categories of wood furniture coatings, aerospace coatings and shipbuilding and repair coatings, (64 FR 37773, July 13, 1999), such analysis is not necessary for evaluating likely VOC emission reductions, particularly, where, as in our Group II action (71 FR 58745, October 5, 2006), our Group III action (72 FR 57215, October 9, 2007), and here, a CTG can achieve significant emission reductions from end-users of the consumer and/or commercial products at issue, which cannot be achieved through regulation under CAA section 183(e). In addition, for the reasons described below, a regulation governing the manufacturers and suppliers of these products would be unlikely to achieve the objective of reducing VOC emissions from these products in ozone nonattainment areas.

E. Proposed Determination

Based on the factors identified above and the facts and circumstances associated with each of the Group IV product categories, EPA proposes to determine that CTGs for miscellaneous metal products coatings, plastic parts coatings, auto and light-duty truck assembly coatings, fiberglass boat manufacturing materials, and miscellaneous industrial adhesives will be substantially as effective as national regulations in reducing VOC emissions from facilities located in ozone nonattainment areas.

In each of the four sections below (miscellaneous metal products coatings and plastic parts coatings are addressed in a single CTG and are therefore addressed in the same section below), we provide a general description of the industry, identify the sources of VOC emissions associated with the industry, summarize the recommended control techniques in the draft CTG and describe the impacts of those techniques, and discuss the considerations supporting our proposed determination under CAA section 183(e)(3)(C) that a CTG will be substantially as effective as a regulation in reducing VOC emissions in ozone nonattainment areas from the product category at issue.

The specific subsections below are organized into two parts, each of which addresses two of the factors relevant to the CAA section 183(e)(1)(C) determination. The first part addresses whether it is more effective to target the point of manufacture of the product or the point of use for purposes of reducing VOC emissions and discusses whether our proposed approach is consistent with existing Federal, State and local VOC reduction strategies. The second part addresses the product's distribution and place of use and discusses the likely VOC emission reductions associated with a CTG, as compared to a regulation.

Finally, we propose to find that these five product categories are appropriate for inclusion on the CAA section 183(e) list in accordance with the factors and criteria that EPA used to develop the original list. See Consumer and Commercial Products: Schedule for Regulation, 60 FR 15264 (March 23, 1995).

F. Availability of Documents

We have prepared four draft CTG documents covering the five consumer and commercial product categories addressed in this action (miscellaneous metal products coatings and plastic parts coatings are addressed in a single CTG). Each of the draft CTGs addresses, among other things, RACT recommendations, cost impacts, and existing Federal, State and local VOC control strategies. In conjunction with the draft CTG for Auto and Light-Duty Truck Coating, we have also prepared a draft revision of the Automobile Topcoat Protocol (please see section III.B for a more detailed discussion). The draft CTG and the draft revision of the Automobile Topcoat Protocol are available for public comment and are contained in the respective dockets listed in the **ADDRESSES** section of this notice.

II. Miscellaneous Metal and Plastic Parts Coatings

A. Industry Characterization

1. Source Category Description

The miscellaneous metal products coatings category and the plastic parts coatings category refer to coatings that are applied to miscellaneous metal products and plastic parts. Miscellaneous metal products and plastic parts include, but are not limited to, metal and plastic components of the following types of products as well as the products themselves: Motor vehicle parts and accessories, bicycles and sporting goods, toys, recreational vehicles, extruded aluminum structural components, railroad cars, heavier vehicles,[7] medical equipment, lawn and garden equipment, business machines, laboratory and medical equipment, electronic equipment, steel drums, industrial machinery, metal pipes, and numerous other industrial and household products (hereinafter collectively referred to as the ''miscellaneous metal and plastic parts''). The draft CTG applies to manufacturers of miscellaneous metal and plastic parts that surface-coat the parts they produce. The draft CTG also applies to facilities that perform surface coating of miscellaneous metal and plastic parts on a contract basis.

Miscellaneous metal and plastic parts coatings do not include coatings that are a part of other product categories listed under section 183(e) of the CAA and/or addressed by other CTGs. These other categories that are not part of the miscellaneous metal and plastic parts coatings categories include shipbuilding and repair coatings; aerospace coatings; wood furniture coatings; metal furniture coatings; large appliance coatings; auto and light-duty truck assembly coatings; flatwood paneling coatings; and paper, film, and foil coatings. Can coatings, coil coatings, and magnet wire coatings were not listed under section 183(e) of the CAA, but were addressed by earlier CTGs, and are also not included in the miscellaneous metal and plastic parts coatings categories.

Sealers, deadeners, transit coatings and cavity waxes applied to new automobile or new light-duty truck bodies, or body parts for new automobiles or new light-duty trucks are included in the miscellaneous metal and plastic parts coatings categories and are addressed in the draft CTG for miscellaneous metal products and plastic parts coatings. In the draft CTG, however, we seek comments on whether the use of these coatings in the production of new automobiles and new light-duty trucks should be included in the miscellaneous metal and plastic parts coatings categories and addressed in the CTG for miscellaneous metal and plastic parts coatings, or in the auto and light-duty truck assembly coatings category and addressed in the CTG for auto and light-duty truck assembly coatings.

Miscellaneous metal and plastic parts coatings include several categories of primers, topcoats, and specialty coatings, typically defined by the coatings function. The types of coating technologies used in the miscellaneous metal and plastic parts surface coating industry include higher solids, waterborne, and powder coatings, as well as conventional solvent-borne coatings. The coatings provide a covering, finish, or functional or protective layer to the surface of miscellaneous metal and plastic parts. They also provide a decorative finish to these miscellaneous metal and plastic parts.

2. Processes, Sources of VOC Emissions, and Controls

The VOC emissions from miscellaneous metal and plastic parts surface coatings are a result of evaporation of the VOC contained in many of the coatings and cleaning materials[8] used in miscellaneous metal and plastic parts surface coating operations. The primary VOC emissions from miscellaneous metal and plastic parts coatings occur during coating application, flash-off, and coating curing/drying. Some VOC emissions also occur during mixing and thinning of the coatings. The VOC emissions from mixing and thinning operations occur from displacement of VOC-laden air in containers used to mix coatings before coating application. The displacement of VOC-laden air can occur during the filling of containers. It can also be caused by changes in temperature or barometric pressure, or by agitation during mixing.

The primary VOC emissions from the cleaning materials occur during cleaning operations, which include spray gun cleaning, paint line flushing, rework operations, and touchup cleaning at final assembly. VOC emissions from surface preparation (where miscellaneous metal and plastic parts are treated and/or cleaned prior to coating application), coating storage and handling, and waste/wastewater operations (i.e., handling waste/wastewater that may contain residues from both coatings and cleaning materials) are small.

As mentioned above, the majority of VOC emissions from miscellaneous metal and plastic parts coatings occur from evaporation of solvents in the coatings during coating application. The transfer efficiency (the percent of coating solids deposited on the metal and plastic parts) of a coating application method affects the amount of VOC emissions during coating application. The more efficient a coating application method is in transferring coatings to the metal and plastic parts, the lower the volume of coatings (and therefore solvents) needed per given amount of production, thus resulting in lower VOC emissions.

The coatings used in the miscellaneous metal and plastic parts surface coating industry may be in the form of a liquid or powder. Liquid coatings may be applied by means of spray or dip coating. Conventional air atomized spray application systems utilize higher atomizing air pressure and typically have transfer efficiencies ranging between 25 and 40 percent. Dip coating is the immersion of miscellaneous metal and plastic parts into a coating bath and is typically used on parts that do not require high quality appearance. The transfer efficiency of a dip coater is very high (approximately 90 percent); however, some VOC is emitted from the liquid coating bath due to its large exposed surface area.

Many spray-applied coatings on metal parts are electrostatically applied. Electrostatic spray application can be done with both liquid and powder coatings. In electrostatic coating, an electrical attraction between the paint, which is positively charged, and the grounded metal enhances the amount of coating deposited on the surface. For liquid coatings, this coating method is more efficient than conventional air atomized spray, with transfer efficiency typically ranging from 60 to 90 percent.

Other liquid coating application methods used in the miscellaneous

[7] Heavier vehicles includes all vehicles that meet the definition of the term ''other motor vehicles,'' as defined in the National Emission Standards for Surface Coating of Automobile and Light-Duty Trucks at 40 CFR 63.3176.

[8] In a previous notice, EPA stated that the cleaning operations associated with certain specified section 183(e) consumer and commercial product categories, including the miscellaneous metal products coatings category and the plastic parts coatings category, would not be covered by EPA's 2006 CTG for industrial cleaning solvents (71 FR 44522 and 44540, August 4, 2006). In the notice, EPA expressed its intention to address cleaning operations associated with these categories in the CTGs for these specified categories if we determine that a CTG is appropriate for the respective categories. Accordingly, the draft CTG for the miscellaneous metal products coatings category and the plastic parts coatings category addresses VOC emissions from cleaning operations associated with these two product categories.

metal and plastic parts surface coating industry include flow coating, roll coating, high volume/low pressure (HVLP) spray, electrocoating, autophoretic coating, and application by hand. These coating methods are described in more detail in the draft CTG.

Spray-applied coatings are typically applied in a spray booth to capture paint overspray, remove solvent vapors from the workplace, and to keep the coating operation from being contaminated by dirt from other operations. In spray coating operations, the majority of VOC emissions occur in the spray booth.

After coatings are applied, the coated miscellaneous metal and plastic parts and products are often baked or cured in heated drying ovens, but some are air dried, especially for some heat-sensitive plastic parts. For liquid spray and dip coating operations, the coated parts or products are typically first moved through a flash-off area after the coating application operation. The flash-off area allows solvents in the wet coating film to evaporate slowly, thus avoiding bubbling of the coating while it is curing in the oven. The amount of VOC emitted from the flash-off area depends on the type of coating used, the speed of the coating line (i.e., how quickly the part or product moves through the flash-off area), and the distance between the application area and bake oven.

After flash-off, the miscellaneous metal and plastic parts are usually cured or dried. For powder coatings on miscellaneous metal parts, the curing/drying step melts the powder and forms a continuous coating on the part or product. For liquid coatings, this step removes any remaining volatiles from the coating. The cured coatings provide the desired decorative and/or protective characteristics. The VOC emissions during the curing/drying process result from the evaporation of the remaining solvents in the dryer.

The VOC emissions from the coating process can be controlled and reduced through changes in coatings and application technology. Until the late 1970's, conventional solvent-borne coatings were used in the miscellaneous metal and plastic parts surface coating industry. Since then, the industry has steadily moved towards alternative coating formulations that eliminate or reduce the amount of solvent in the formulations, thus reducing VOC emissions per unit amount of coating solids used.

Currently the miscellaneous metal and plastic parts surface coating industry uses primarily higher solids solvent-borne coatings and waterborne coatings, as well as powder coatings on miscellaneous metal parts. Other alternative coatings include UV-cured coatings. These coatings are described in more detail in the CTG. When feasible, many coatings are applied by electrostatic spraying which, as mentioned above, has a higher transfer efficiency than the conventional air atomized spray. The combination of low-VOC coating type and electrostatic spraying is an effective measure for reducing VOC emissions. Not only are VOC emissions reduced by using coatings with low-VOC content, the use of an application method with a high transfer efficiency, such as electrostatic spraying, lowers the volume of coatings needed per given amount of production, thus further reducing the amount of VOC emitted during the coating application.

The most common approach to reduce emissions from miscellaneous metal and plastic parts coating operations is to use low-VOC content coatings, including powder coatings, higher solids solvent-borne coatings, and UV-cured coatings. More efficient coating application methods can also be used to reduce VOC emissions by reducing the amount of coating that is used in coating operations. Add-on controls may also be used to reduce VOC emissions from miscellaneous metal and plastic parts coatings and cleaning materials. In some cases, add-on controls are used where it is necessary or desirable to use high-VOC materials, but they are also used in combination with low-VOC coatings and/or more efficient coating application methods to achieve additional emission reductions.

As previously mentioned, the majority of VOC emissions from spray coating operations occur in the spray booth. The VOC concentration in spray booth exhaust is typically low because a large volume of exhaust air is used to dilute the VOC emissions for safety reasons. Although VOC emissions in spray booth exhaust can be controlled with add-on controls, because of the large volume of air that must be treated and the low concentration of VOC, it is generally not cost-effective to do so. On the other hand, the wide availability and lower cost of low-VOC content coatings makes them a more attractive option than add-on controls for reducing VOC emissions during coating application. For those situations where an add-on control device can be justified for production or specific coating requirements, thermal oxidation and carbon adsorption are most widely used. Please see the draft CTG for a detailed discussion of these and other available control devices.

To control VOC emissions from containers used to store or mix coatings containing VOC solvents, work practices (e.g., using closed storage containers) are used throughout the miscellaneous metal and plastic parts surface coating industry.

Work practices are also widely used throughout the miscellaneous metal and plastic parts surface coating industry as a means of reducing VOC emissions from cleaning operations. These measures include covering mixing tanks, storing solvents and solvent soaked rags and wipes in closed containers, and cleaning spray guns in an enclosed system. Another means of reducing VOC emissions from cleaning operations is the use of low-VOC content, low vapor pressure, or low boiling point cleaning materials. However, little information is available regarding the effectiveness of the use of these types of cleaning materials to reduce VOC emissions in the miscellaneous metal and plastic parts surface coating industry.

3. Existing Federal, State, and Local VOC Control Strategies

There are five previous EPA actions that affect miscellaneous metal and plastic parts surface coating operations. These actions are summarized below, but are described in more detail in the actual proposed CTG.

- CTG for Surface Coating of Miscellaneous Metal Parts and Products (1978).
- New Source Performance Standards for Surface Coating of Plastic Parts for Business Machines (1988).
- Alternative Control Techniques Document for Surface Coating of Automotive/Transportation and Business Machine Plastic Parts (1994).
- National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products (2004).
- National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products (2004).

In 1978, EPA issued a CTG document entitled ''Control of Volatile Organic Emissions from Existing Stationary Sources Volume VI: Surface Coating of Miscellaneous Metal Parts and Products'' (EPA–450/2–78–015) (1978 CTG) that provided RACT recommendations for controlling VOC emissions from miscellaneous metal part surface coating operations. The 1978 CTG addressed VOC emissions from miscellaneous metal part coating lines, which include the coating application area, the flash-off area, and the curing/drying ovens. The 1978 CTG

did not cover can coating, coil coating, wire coating, auto and light duty truck coating, metal furniture coating, and large appliance coating, all of which were addressed by other CTGs. The 1978 CTG recommended RACT VOC content limits for five miscellaneous metal part surface coating categories. These categories included (1) coatings for air-dried or forced air-dried items, including parts too large or too heavy for practical size ovens and/or with sensitive heat requirements, for parts to which heat-sensitive materials are attached, and for equipment assembled prior to top coating for specific performance or quality standards; (2) clear coatings; (3) coatings for outdoor or harsh exposure or extreme performance characteristics; (4) powder coatings; and (5) all other coatings, including baked coatings, and the first coat applied on an untreated ferrous substrate. The recommended VOC content limits for these five categories were all expressed in the form of kg VOC per liter of coating, minus water and exempt compounds.[9] The 1978 CTG did not address VOC emissions from cleaning materials.

In 1988, EPA promulgated new source performance standards (NSPS) for the surface coating of plastic parts for business machines (40 CFR part 60 subpart TTT).[10] Business machines include typewriters, electronic computers, calculating and accounting machines, telephone and telegraph equipment, photocopy machines, and other office machines not elsewhere classified. The NSPS established VOC emission limits for spray booths in four categories of coating operations (Prime coating, Color coating, Texture coating, and Touch-up Coating). All of these limits were in units of kg VOC per liter of coating solids applied to the part, which accounts for the transfer efficiency of the coating application equipment. The NSPS did not address cleaning operations or materials.

In 1994, EPA published ''Alternative Control Techniques Document: Surface Coating of Automotive/Transportation and Business Machine Plastic Parts'' (EPA–453/R–94–017, February 1994) (1994 ACT). The 1994 ACT provides information on control techniques for VOC emissions from the surface coating of plastic parts for automotive/transportation and business machine/electronic products. It provides information on emissions, controls, control options, and costs that States can use in developing rules based on RACT, but presents only options in terms of coating reformulation control levels, and does not contain a recommendation on RACT. The 1994 ACT presented coating reformulation control levels for over 20 categories of coatings in terms of kg VOC per liter of coating, less water and exempt compounds. The 1994 ACT did not address VOC emissions from cleaning materials.

Because the 1988 NSPS limits are expressed in terms of coating solids deposited and the 1994 ACT recommended limits are expressed in terms of VOC per gallon of coating, less water and exempt solvents, these limits cannot be compared directly for surface coating of business machine plastic parts without making an assumption for the transfer efficiency of the application equipment. If we assume a transfer efficiency of 40 percent, then the 1988 NSPS limits for business machine coating are less stringent than the most stringent control level in the 1994 ACT for comparable categories of coatings.

In 2004, EPA promulgated the National Emissions Standards for Hazardous Air Pollutants: Surface Coating of Miscellaneous Metal Parts and Products, 40 CFR part 63, subpart MMMM, which applies to metal part surface coating operations. In the same year, EPA also promulgated the National Emission Standards for Hazardous Air Pollutants: Surface Coating of Plastic Parts and Products, 40 CFR part 63, subpart PPPP. These two NESHAP addressed organic hazardous air pollutants (HAP) emissions, from all activities at a facility that involve coatings, thinners, and cleaning materials used in metal part and plastic part surface coating operations. The two NESHAP regulate coating operations (including surface cleaning, coating application, and equipment cleaning); vessels used for storage and mixing of coatings, thinners, and cleaning materials; equipment, containers, pipes and pumps used for conveying coatings, thinners, and cleaning materials; and storage vessels, pumps and piping, and conveying equipment and containers used for waste materials.

The NESHAP for miscellaneous metal parts and products surface coating established organic HAP emission limitations for five categories of coatings (general use, high performance, magnet wire, rubber to metal bonding, and extreme performance fluoropolymer coatings). The NESHAP for plastic parts and products surface coating set organic HAP emission limitations for four categories of coatings (general use, automotive lamp, thermoplastic olefin substrates, and assembled on-road vehicles). In each NESHAP, coatings that do not meet one of the specialty category definitions are subject to the general use emission limitations. In demonstrating compliance with the HAP content limits for each category in both NESHAP, sources have to include the HAP emissions from cleaning in their emission calculations. Since these two NESHAP are both based on coating reformulation to lower the HAP content, it is not known how compliance has affected VOC emissions, if at all, since HAP could be replaced with non-HAP VOC in many coatings.

In addition to the EPA actions mentioned above, at least 37 States and several local jurisdictions have specific regulations that control VOC emissions from miscellaneous metal and plastic parts surface coating operations. These States and local jurisdictions require one or more of the following measures: limits on the VOC content of coatings, requirements to reduce VOC emissions from cleaning operations, and requirements to use high transfer efficiency application equipment or methods to apply coatings. The State actions addressing miscellaneous metal and plastic parts surface coating are described in detail in the actual draft CTG.

Almost all of the States that specifically address metal part coatings have adopted the categories and corresponding emission limits recommended in the 1978 CTG. However, 19 States have additional categories and limits, usually to address high performance architectural coatings, steel pail and drum coatings, or heavy duty truck coating.

In 1992, the California Air Resources Board (ARB) developed a RACT guidance document for metal part surface coating operations that included separate VOC content limits for baked and air dried coatings. The ARB guidance contains RACT limits for general coatings and 15 categories of specialty coatings. Coatings that do not meet the definition of one of the specialty categories are subject to the general coating limit. Compared to the 1978 CTG, which recommended separate limits for five categories, the 1992 ARB guidance has specific limits for more categories of specialty coatings that cannot meet the more stringent ''general use'' category limits. However, overall, the recommended VOC content limits in the 1992 ARB guidance are more stringent than the recommended limits in the 1978 CTG.

[9] The list of exempt compounds that are considered to be negligibly photochemically reactive in forming ozone can be found in the definition of VOC at 40 CFR 51.100(s).

[10] The 1988 NSPS applies to sources that commenced construction, reconstruction, or modification after January 8, 1988.

A total of 15 air pollution control Districts in California have established rules for metal part surface coating operations, but they do not all include the same categories and limits as the ARB RACT guidance. Among these Districts, the South Coast Air Quality Management District (SCAQMD) has adopted the most stringent VOC content limits for 21 categories of metal parts coatings in SCAQMD Rule 1107 (South Coast Rule 1107). All of these limits, except the limits for four categories of air dried coatings (general use one component coatings, extreme high gloss, and one and two component high performance architectural component coatings), have been in place since the rule's 1996 amendment or earlier. Since the 1996 amendment, SCAQMD has further tightened the limits for these four categories of air dried coatings through subsequent amendments to Rule 1107.

As an alternative to meeting VOC content limits, South Coast Rule 1107 requires that, if add-on controls are used, the control system must capture at least 90 percent of the VOC emissions. Rule 1107 further requires that the captured VOC emissions be reduced by at least 95 percent or the VOC concentration at the outlet of the air pollution control device be no more than 5 ppm VOC by volume calculated as carbon with no dilution, and that the control system achieves at least 90 percent capture. The add-on control requirements described above have been in place since the rule's 1996 amendment or earlier.

In addition to SCAQMD Rule 1107, SCAQMD has also issued SCAQMD Rule 1125 to regulate VOC emissions from steel pail and drum coating operations, whose coatings are included in the miscellaneous metal products coatings category listed under 183(e). SCAQMD Rule 1125 establishes limits for interior and exterior coatings used on new and reconditioned drums and pails. At least four other Districts have specific limits for these surface coating operations in either their metal part surface coating rules or rules for metal container coating operations.

For plastic part surface coating, 13 States have established rules to limit VOC emissions, and one State has issued a proposed rule. Seven of the State rules (Delaware, Illinois, Massachusetts, Michigan, New Hampshire, Tennessee, and Wisconsin) and the one proposed rule (Ohio) adopted the categories and control levels in the 1994 ACT for automotive and business machine plastic parts. The other six States (Arizona, California, Indiana, Maryland, Missouri, and New York) have not adopted the control levels provided in the 1994 ACT. Instead, they have adopted limits for only one or two categories of plastic parts coatings. In some cases, these limits apply to all plastic parts coatings and are not limited to only automotive or business machine plastic parts. These limits are generally not as stringent as the most stringent control level in the 1994 ACT for comparable coating categories.

Three California Air Quality Management Districts, including the SCAQMD, have rules containing emission limits for coating plastic parts. South Coast Rule 1145 (Plastic, Rubber, Leather, And Glass Coatings) has VOC content limits for 11 categories of coatings that can be applied to plastics. All of these limits, except the limits for four categories (general use one and two component coatings, electrical dissipating and shock free coatings, and optical coatings), have been in place since the rule's 1997 amendment or earlier. Since the 1997 amendment, SCAQMD has further tightened the limits for the four categories identified above through subsequent amendments to Rule 1145.

As an alternative to meeting VOC content limits, South Coast Rule 1145 requires that, if add-on controls are used the control system must capture at least 90 percent of the VOC emissions. Rule 1145 further requires that the captured VOC emissions be reduced by at least 95 percent or the VOC concentration at the outlet of the air pollution control device be no more than 5 ppm VOC by volume calculated as carbon with no dilution, and that the control system achieves at least 90 percent capture. The add-on control requirements described above have been in place since 1997 or earlier.

Several States (California, Arizona, Massachusetts, and New Hampshire) that limit the VOC content of the coatings used for miscellaneous metal and plastic parts coating have requirements to use specific types of high-efficiency coating application methods to further reduce VOC emissions. For example, in addition to limiting the VOC contents in the coatings, SCAQMD Rule 1107 requires the use of one of the following types of application equipment: Electrostatic application; flow coating; dip coating; roll coating; hand application; HVLP spray; or an alternative method that is demonstrated to be capable of achieving a transfer efficiency equal to or better than HVLP spray. Alternative methods must be approved by the District based on actual transfer efficiency measurements in a side-by-side comparison of the alternative method and an HVLP spray gun. Rules that regulate emissions from miscellaneous metal and plastic parts surface coating from at least nine other Districts are similar to SCAQMD Rule 1107 in that they also require that sources use methods that achieve high transfer efficiency.

California and at least 11 other States have requirements to reduce VOC emissions from cleaning materials used in metal and plastic parts surface coating operations. At least 12 Districts in California regulate the VOC content of cleaning materials used in these surface coating operations. These regulations are aimed at reducing VOC emissions from cleaning materials by combining work practice and equipment standards with limits on the VOC content, boiling point, or composite vapor pressure of the solvent being used. Some District rules allow the use of add-on controls as an alternative to the VOC content/boiling point/vapor pressure limits for cleaning materials. As mentioned above, several Districts have established work practice and equipment standards to minimize VOC solvent emissions. These standards include, for example, using closed containers for storing solvent and solvent containing wipes and rags, using enclosed and automated spray gun washing equipment, and prohibiting atomized spraying of solvent during spray gun cleaning. However, the cleaning material VOC content/boiling point/vapor pressure limits, overall control efficiency requirements, and work practices vary by District.

Among the other States, besides California, with cleaning material requirements, only Massachusetts limits the VOC content of solvents used for surface preparation, and none limit the VOC content, boiling point, or vapor pressure of solvents used for spray gun cleaning. Instead, they have established equipment standards and work practices, such as using enclosed spray gun washers and storing solvents and solvent containing rags and wipes in closed containers. For metal part surface coating operations, seven States require that VOC from equipment cleaning be considered in determining compliance with the emission limit for each coating category, unless the solvent is directed into containers that prevent evaporation into the atmosphere.

B. Recommended Control Techniques

The draft CTG recommends certain control techniques for reducing VOC emissions from miscellaneous metal and plastic parts surface coatings and associated cleaning materials. As explained in the draft CTG, we are

recommending these control options for miscellaneous metal and plastic parts surface coating operations that emit 6.8 kg VOC per day (VOC/day) (15 lb VOC/day or 3 tons per year (tpy)) or more before consideration of control. For purposes of determining whether a facility meets the 6.8 kg VOC/day (15 lb VOC/day or 3 tpy) threshold, aggregate emissions from all miscellaneous metal and plastic parts surface coating operations and related cleaning activities at a given facility are included.

The draft CTG would not apply to facilities that emit below the threshold level because of the very small VOC emission reductions that would be achieved. The recommended threshold level is equivalent to the evaporation of approximately two gallons of solvent per day. Such a level is considered to be an incidental level of solvent usage that could be expected even in facilities that use very low-VOC content coatings, such as powder or UV-cure coatings. Furthermore, based on the 2002 National Emission Inventory (NEI) data and the 2004 ozone nonattainment designations, facilities emitting below the recommended threshold level collectively emit less than four percent of the total reported VOC emissions from miscellaneous metal and plastic parts surface coating facilities in ozone nonattainment areas. For these reasons, the draft CTG does not specify control for these low emitting facilities. This recommended threshold is also consistent with our recommendations in many previous CTGs.

In addition, with respect to heavier vehicle [11] bodies and body parts coatings, which are included in the Miscellaneous Metal Products and Plastic Parts coatings categories and are therefore covered by this draft CTG, we recommend certain flexibility in applying this draft CTG. Specifically, we recommend that States consider structuring their RACT rules to provide heavier vehicle coating facilities with the option of meeting the requirements for automobile and light-duty truck coating category in lieu of the requirements for the miscellaneous metal products coatings category or the plastic parts coatings category. Please see section III.B of this notice for a discussion of our reasons for this recommendation.

1. Coatings

The draft CTG provides flexibility by recommending three options for controlling VOC emissions from miscellaneous metal and plastic parts coatings: (1) VOC content limits for each coating category based on the use of low-VOC content coatings (expressed as kg VOC per liter (kg VOC/l) coating, less water and exempt compounds) and specified application methods to achieve good coating transfer efficiency; (2) emission rate limits (expressed as kg VOC/l of coating solids) based on the use of a combination of low-VOC coatings, specified application methods, and add-on controls; or (3) an overall control efficiency of 90 percent for facilities that choose to use add-on controls instead of low-VOC content coatings and specified application methods. The first two options are expected to achieve equivalent VOC emission reductions. The third option provides facilities the flexibility to use a high efficiency add-on control in lieu of low-VOC coatings and specified application methods, especially when the use of high VOC coatings is necessary or desirable. The third option is expected to achieve an emission reduction at least as great as the first two options.

For Option 1, we are recommending the VOC content limits and application method, as well as the exemptions, in the following regulations:

- South Coast AQMD's Rule 1107 (March 6, 1996) for Coating of Metal Parts and Products.
- South Coast AQMD's Rule 1125 (as amended January 13, 1995) for Metal Container, Closure, and Coil Coating.
- South Coast AQMD's Rule 1145 (February 14, 1997) for Plastic, Rubber, Leather, and Glass Coatings.
- Michigan Rule 336.1632 (as amended April 28, 1993) for Emission of Volatile Organic Compounds From Existing Automobile, Truck, and Business Machine Plastic Part Coating Lines.

The limits in SCAQMD Rule 1125 and Michigan Rule 336.1632 have been in place since the amendments noted above for these rules. As mentioned above, SCAQMD has changed the limits for several categories in SCAQMD Rules 1107 and 1145 in subsequent amendments to these two rules. These new limits, however, have not been in place very long. We do not have information regarding the cost of implementing these new limits. We could not conclude that these limits are technologically and economically feasible and, therefore, reflect RACT for all affected facilities in ozone nonattainment areas nationwide. We are, therefore, not recommending the limits in SCAQMD Rules 1107 and 1145 promulgated subsequent to the amendments to these rules noted above.

The recommended limits in SCAQMD rules described above are more stringent than the limits provided in other existing Federal, State, and local actions limiting VOC emissions from these coating categories. Because of the large size of the SCAQMD and the number of regulated sources, the facilities subject to these three SCAQMD rules are considered to be representative of the type of sources located in other parts of the country. The recommended limits have been or were in effect a long time (i.e., since 1997 or earlier). Therefore, we believe that these limits are technically and economically feasible for sources in other parts of the country and, therefore, have included them as our recommendations in the draft CTG.

The Michigan rule is based on the control levels provided in the 1994 ACT, which is more stringent than the 1988 NSPS for comparable coating categories for business machines. Michigan has a substantial number of sources subject to Rule 336.1632, and these sources' compliance with Michigan Rule 336.1632 shows that the VOC content limits in Michigan Rule 336.1632 are technically and economically feasible. The limits in the Michigan rule have been in effect since 1993. Therefore, we recommend in the draft CTG the VOC content limits contained in Michigan Rule 336.1632.

Specifically, for miscellaneous metal parts surface coatings, Option 1 in the draft CTG includes the VOC content limits in SCAQMD Rule 1107 (Coating of Metal Parts and Products, March 6, 1996), which sets separate limits for baked coatings and air-dried coatings for 21 categories of coatings used on metal parts. Option 1 also includes four limits for drum, pail and lid coating in SCAQMD Rule 1125 (Metal Container, Closure, and Coil Coating Operations, as amended January 13, 1995).

For surface coating of plastic parts that are not part of automotive/transportation equipment or business machines, the draft CTG includes the VOC content limits in SCAQMD Rule 1145 (Plastic, Rubber, Leather, and Glass coatings) (February 14, 1997) for 11 categories of plastic parts coatings. These limits became effective January 1, 1998. As mentioned above, all but four of these limits are still in place.

For surface coatings for automotive plastic parts and business machine plastic parts, Option 1 includes the VOC content limits in Michigan Rule 336.1632 (Emission of Volatile Organic Compounds from Existing Automobile, Truck, and Business Machine Plastic Part Coating Lines).

[11] As previously mentioned, heavier vehicles refers to all vehicles that meet the definition of the term ''other motor vehicles,'' as defined in the NESHAP for Surface Coating of Automobiles and Light-Duty Trucks at 40 CFR 63.3176.

As in the SCAQMD rule 1107, for metal parts coatings, we recommend in the draft CTG that only the recommended work practices, but not the recommended VOC limits and application methods, apply to the following types of coatings and coating operations: Stencil coatings; safety-indicating coatings; magnetic data storage disk coatings; solid-film lubricants; electric-insulating and thermal-conducting coatings; coating application using hand-held aerosol cans; plastic extruded onto metal parts to form a coating. We also recommend that the recommended application methods not apply to touch-up coatings, repair coatings, and textured finishes, but we recommend that the recommended VOC limits and work practices apply to these coatings and coating operations.

As in SCAQMD Rule 1145, we recommend in the draft CTG that the recommended application methods and work practices, but not the recommended VOC limits, apply to the following types of coatings and coating operations that are not for automotive/transportation equipment or business machines: Touch-up and repair coatings; stencil coatings applied on clear or transparent substrates; clear or translucent coatings; coatings applied at a paint manufacturing facility while conducting performance tests on the coatings; any individual coating category used in volumes less than 50 gallons in any one year, if substitute compliant coatings are not available, provided that the total usage of all such coatings does not exceed 200 gallons per year, per facility; reflective coating applied to highway cones; mask coatings that are less than 0.5 millimeter thick (dried) and the area coated is less than 25 square inches; or coatings that are less than 0.5 millimeter thick (dried) and/or the area coated is more than 25 square inches; EMI/RFI shielding coatings; heparin-benzalkonium chloride (HBAC)-containing coatings applied to medical devices, provided that the total usage of all such coatings does not exceed 100 gallons per year, per facility; aerosol coating products; and airbrush operations using five gallons or less per year. We also recommend that the recommended application methods not apply to airbrush operations using 5 gallons or less per year of coating, but we recommend that the VOC limits and work practices apply to these operations.

For automotive/transportation and business machine plastic part coating, we also recommend in the draft CTG that the recommended application methods and work practices, but not the recommended VOC limits, apply to the following types of coatings and operations: Texture coatings; vacuum metalizing coatings; gloss reducers; texture topcoats; adhesion primers; electrostatic preparation coatings; resist coatings; and stencil coatings. Further details of these recommendations, including tables of coating categories and limits, can be found in the draft CTG.

The VOC emission rate limits in Option 2 (VOC per volume solids) were converted from the VOC content limits in Option 1 using an assumed VOC density of 7.36 lb/gallon (883 g/liter).

The draft CTG also recommends the use of the following application methods to achieve good coating transfer efficiency when using low-VOC coatings under the first or second option: Electrostatic spray, HVLP spray, flow coat, roller coat, dip coat including electrodeposition, brush coat, or other coating application methods that are capable of achieving a transfer efficiency equivalent or better than that achieved by HVLP spraying. The draft CTG recommends the use of these application methods in conjunction with the use of low-VOC content coatings.

Furthermore, the draft CTG recommends the following work practices for use with all three of the control options: (1) Store all VOC-containing coatings, thinners, and coating-related waste materials in closed containers; (2) ensure that mixing and storage containers used for VOC-containing coatings, thinners, and coating-related waste materials are kept closed at all times except when depositing or removing these materials; (3) minimize spills of VOC-containing coatings, thinners, and coating-related waste materials; and (4) convey coatings, thinners and coating-related waste materials from one location to another in closed containers or pipes.

2. Cleaning Materials

The draft CTG recommends work practices to reduce VOC emissions from cleaning materials. We recommend that, at a minimum, the work practices include the following: (1) Store all VOC-containing cleaning materials and used shop towels in closed containers; (2) ensure that mixing and storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials; (3) minimize spills of VOC-containing cleaning materials; (4) convey cleaning materials from one location to another in closed containers or pipes; and (5) minimize VOC emissions from cleaning of application, storage, mixing, and conveying equipment by ensuring that application equipment cleaning is performed without atomizing the cleaning solvent outside of an enclosure and all spent solvent is captured in closed containers.

C. Impacts of Recommended Control Techniques

Based on the 2002 NEI database, we estimate that there are 3,925 miscellaneous metal and plastic parts surface coating facilities in the United States (U.S.). Using the April 2004 ozone nonattainment designations, we estimated that 2,539 of these facilities are in ozone nonattainment areas. Based on the 2002 NEI VOC emissions data, 1,296 of the 2,539 facilities in ozone nonattainment areas emitted VOC at or above the recommended 6.8 kg VOC/day (15 lb VOC/day or 3 tpy) applicability threshold. These 1,296 facilities, in aggregate, emit an estimated 20,098 Mg/yr (22,108 tpy) of VOC, or an average of about 15.5 Mg/yr (17.0 tpy) of VOC per facility.

We have estimated the total annual control costs to be approximately $13.5 million based on the use of low-VOC coatings, and emission reductions will be about 35 percent. Since these recommended measures are expected to result in a VOC emissions reduction of 7,034 Mg/yr (7,738 tpy), the cost-effectiveness is estimated to be $1,919/Mg ($1,745/ton). The impacts are further discussed in the draft CTG document.

We have concluded that the work practice recommendations in the draft CTG will result in a net cost savings. These work practices reduce the amount of cleaning materials used by decreasing the amount that evaporates and is therefore wasted. Similarly, the adoption of more efficient spray guns, as recommended in the CTG, will reduce coating consumption and will also result in net cost savings compared to conventional spray guns. However, because we cannot determine the extent to which these practices have already been adopted, we cannot quantify these savings. Therefore, these cost savings are not reflected in the above cost impacts.

D. Considerations in Determining Whether a CTG Will Be Substantially as Effective as a Regulation

In determining whether to issue a national rule or a CTG for the product categories of miscellaneous metal product and plastic parts surface coatings under CAA section 183(e)(3)(C), we analyzed the four factors identified above in section I.D in

light of the specific facts and circumstances associated with these product categories. Based on that analysis, we propose to determine that a CTG will be substantially as effective as a rule in achieving VOC emission reductions in ozone nonattainment areas from miscellaneous metal product and plastic parts surface coating and associated cleaning materials.

This section is divided into two parts. In the first part, we discuss our belief that the most effective means of achieving VOC emission reductions in these two CAA section 183(e) product categories is through controls at the point of use of the product (i.e., through controls on the use of coating and cleaning materials at miscellaneous metal and plastic parts surface coating facilities), and these controls can be accomplished only through a CTG. We further explain that the recommended approaches in the draft CTG are consistent with existing effective EPA, State, and local VOC control strategies. In the second part, we discuss how the distribution and place of use of the products in these two product categories also support the use of a CTG. We also discuss the likely VOC emission reductions associated with a CTG, as compared to a regulation. We further explain that there are control approaches for these categories that result in significant VOC emission reductions and that such reductions could only be obtained by controlling the use of the products through a CTG. Such reductions could not be obtained through a regulation under CAA section 183(e) because the controls affect the end-user, which is not a regulated entity under CAA section 183(e)(1)(C). For these reasons, which are described more fully below, we believe that a CTG will achieve greater VOC emission reductions than a rule for these categories.

1. The Most Effective Entity to Target for VOC Reductions and Consistency With Existing Federal, State, and Local VOC Strategies

To evaluate the most effective entity to target for VOC reductions, it is important first to identify the primary sources of VOC emissions. There are two main sources of VOC emissions from miscellaneous metal and plastic parts surface coating: (1) Evaporation of VOC from coatings; and (2) evaporation of VOC from cleaning materials. We address each of these sources of VOC emissions, in turn, below, as we discuss the CTG versus regulation approach.

a. *Coatings.* A national rule could contain limits for the as-sold VOC content of coatings that are marketed as miscellaneous metal and plastic parts coatings. However, the effect of such national rule setting low-VOC content limits for miscellaneous metal and plastic parts surface coatings could be easily subverted because it could not guarantee that only those low-VOC content coating materials would be used for miscellaneous metal and plastic parts surface coating. Many coatings used in miscellaneous metal and plastic parts surface coating operations are not specifically marketed by the supplier as coatings for specific products. Therefore, these facilities could purchase and use high-VOC specialty coatings materials for routine coating operations, and this practice would effectively nullify the reformulation actions of the manufacturers and suppliers of low-VOC coatings, resulting in no net change in VOC emissions in ozone nonattainment areas.

By contrast, a CTG can affect the end-users of the coating materials and, therefore, can implement the control measures that are more likely to achieve the objective of reducing VOC emissions from these product categories in ozone nonattainment areas. As previously discussed, the draft CTG recommends three options for reducing VOC emissions from miscellaneous metal and plastic parts surface coatings: (1) VOC content limits that can be achieved through the use of low-VOC content coatings and specific application methods; (2) equivalent emission limits based on the use of a combination of low-VOC coatings, specific application methods, and add-on controls; and (3) an overall 90 percent control efficiency should a facility choose to use add-on controls in conjunction with high-VOC content coatings. In addition, we recommend in the draft CTG that certain work practices be implemented in conjunction with any of the three control options described above to further reduce VOC emissions from coatings as well as controlling VOC emissions from cleaning materials. These recommended work practices have been shown to effectively reduce VOC beyond the level achievable using either low-VOC materials and specific application methods or add-on controls. Given the significant reductions achievable through the use of these recommended control measures, the most effective entity to address VOC emissions from miscellaneous metal and plastic parts surface coatings is the facility using the coatings.

These control measures are consistent with existing EPA, State, and local VOC control strategies applicable to miscellaneous metal and plastic parts surface coating. As mentioned above, previous EPA actions and existing State and local regulations (in particular, the regulations in the majority of the California air Districts and in Michigan) that address miscellaneous metal and plastic parts surface coating similarly call for VOC emission reduction through the use of low-VOC content materials, or the use of control devices in conjunction with high-VOC content coating materials. Some State and local VOC control strategies also include work practices and specific application methods.

We cannot, however, issue a national rule directly requiring miscellaneous metal and plastic parts surface coating facilities to use low-VOC content coatings, control devices or specific application methods, or to implement work practices to reduce VOC emissions because, pursuant to CAA section 183(e)(1)(C) and (e)(3)(B), the regulated entities subject to a national rule would be the coating manufacturers and suppliers, not the miscellaneous metal and plastic parts surface coating facilities. By contrast, a CTG can reach the end-users of the miscellaneous metal and plastic parts coatings and, therefore, can implement the control recommendations for end-users that are identified above as more likely to achieve the objective of reducing VOC emissions from these product categories in ozone nonattainment areas. Accordingly, we are including these recommended control measures in the draft CTG that applies to miscellaneous metal and plastic parts surface coatings facilities as the end-users of the coating materials.

b. *Cleaning Materials.* There are two primary means to control VOC emissions associated with the cleaning materials used in the miscellaneous metal and plastic parts surface coating process: (1) Limiting the VOC content, boiling point, or VOC vapor pressure of the cleaning materials, and (2) implementing work practices governing the use of the cleaning materials. A national rule requiring that manufacturers of cleaning materials for miscellaneous metal and plastic parts surface coating operations provide low-VOC content or low vapor pressure (high boiling point) cleaning materials would suffer from the same deficiencies noted above with regard to the coatings. Specifically, nothing in a national rule that regulates manufacturers and suppliers of cleaning materials specified for use in miscellaneous metal and plastic parts surface coating operations would preclude the miscellaneous metal and plastic parts surface coating industry from purchasing bulk solvents or other multipurpose cleaning

materials from other vendors. The general availability of bulk solvents or multipurpose cleaning materials from vendors that would not be subject to such regulation would directly undermine the effectiveness of such a national regulation.

The more effective approach for reducing VOC emissions from cleaning materials used by miscellaneous metal and plastic parts surface coaters is to control the use of cleaning materials through work practices. The draft CTG recommends that miscellaneous metal and plastic parts surface coating facilities implement work practices to reduce VOC emissions from cleaning materials during surface coating operations. Examples of effective work practices are: Keeping solvents and used shop towels in closed containers; using enclosed spray gun cleaners and preventing the atomized spraying of cleaning solvent outside of an enclosure; minimizing spills of VOC-containing cleaning materials; cleaning up spills immediately; and conveying any VOC-containing cleaning materials in closed containers or pipes. These work practices have proven to be effective in reducing VOC emissions.

Given the significant VOC reductions achievable through the implementation of work practices, we conclude that the most effective entity to address VOC emissions from cleaning materials used in miscellaneous metal and plastic parts surface coating operations is the facility using the cleaning materials during surface coating operations. This recommendation is consistent with measures required by State and local jurisdictions for reducing VOC emissions from cleaning materials used in miscellaneous metal and plastic parts surface coating operations.

We cannot, however, issue a rule requiring such work practices for miscellaneous metal and plastic parts surface coating facilities because, pursuant to CAA section 183(e)(1)(C) and (e)(3)(B), the regulated entities subject to a national rule would be the cleaning materials manufacturers and suppliers and not the miscellaneous metal and plastic parts surface coating facilities. By contrast, a CTG can address these coating facilities. Accordingly, we are including in the draft CTG these work practices that apply to miscellaneous metal and plastic parts surface coating facilities as the end-users of the cleaning materials.

Based on the nature of the miscellaneous metal and plastic parts surface coating process, the sources of significant VOC emissions from this process, and the available strategies for reducing such emissions, the most effective means of achieving VOC emission reductions from these product categories is through controls at the point of use of the products, (*i.e.,* through controls on miscellaneous metal and plastic parts surface coaters). This strategy can be accomplished only through a CTG. The recommended approaches described in the draft CTG are also consistent with effective existing EPA, State, and local VOC control strategies for miscellaneous metal and plastic parts surface coating operations. These two factors alone demonstrate that a CTG will be substantially as effective as a national regulation under CAA section 183(e) in addressing VOC emissions from miscellaneous metal and plastic parts surface coatings and associated cleaning materials in ozone nonattainment areas.

2. The Product's Distribution and Place of Use and Likely VOC Emission Reductions Associated With a CTG Versus a Regulation

The factors described in the above section, taken by themselves, weigh heavily in favor of the CTG approach. The other two factors relevant to the CAA section 183(e)(3)(C) determination only further confirm that a CTG will be substantially as effective as a national regulation for miscellaneous metal and plastic parts surface coatings and associated cleaning materials.

First, miscellaneous metal and plastic parts surface coatings and associated cleaning materials are used at commercial facilities in specific, identifiable locations. Specifically, these materials are used in commercial manufacturing facilities that apply surface coating to miscellaneous metal and plastic parts, as described in section III.A. This stands in contrast to other consumer products, such as architectural coatings, that are widely distributed and used by innumerable small users (*e.g.* , individual consumers in the general public). Because the VOC emissions are occurring at commercial manufacturing facilities, implementation and enforcement of controls concerning the use of these products are feasible. Therefore the nature of the products' place of use further counsels in favor of the CTG approach.

Second, a CTG will achieve greater emission reduction than a national rule for VOC emissions from miscellaneous metal and plastic parts surface coatings and associated cleaning materials. For the reasons described above, we believe that a national rule limiting the VOC content in coatings and cleaning materials used in miscellaneous metal and plastic parts surface coating operations would result in little VOC emissions reduction. By contrast, a CTG can achieve significant VOC emissions reduction because it can provide for the highly effective emission control strategies described above that are applicable to the end-users of the coatings and cleaning materials at miscellaneous metal and plastic parts surface coating facilities. As described above, our recommendations in the draft CTG include the use of control devices, specific application methods, and work practices. The significant VOC reductions associated with these measures could not be obtained through a national regulation, because they are achieved through the implementation of measures by the end-user. In addition, as previously explained, strategies that arguably could be implemented through rulemaking, such as limiting the VOC content in coatings and cleaning materials, are far more effective if implemented directly at the point of use of the product through a CTG. For the reasons stated above, it is more effective to control the VOC emissions from coatings and cleaning materials used for miscellaneous metal and plastic parts surface coating through a CTG than through a national regulation.

Furthermore, the number of miscellaneous metal and plastic parts surface coating facilities affected by our recommendations in this draft CTG, as compared to the total number of such facilities in ozone nonattainment areas, does not affect our conclusion that the CTG would be substantially more effective than a rule in controlling VOC emissions for these product categories. We recommend the control measures described in the draft CTG for miscellaneous metal and plastic parts surface coating facilities that emit 6.8 kg VOC/day (15 lb VOC/day or 3 tpy) or more VOC. Based on the April 2004 ozone nonattainment designations, we estimate that 1,296 of the 2,539 miscellaneous metal and plastic parts surface coating facilities located in ozone nonattainment areas emit 6.8 kg VOC/day (15 lb VOC/day or 3 tpy) or more and are therefore addressed by our recommendations in the draft CTG. We estimate that 1,243 miscellaneous metal and plastic parts surface coating facilities would not be covered by the recommendations in the draft CTG. However, according to the 2002 NEI database, these 1,243 facilities collectively emitted about 670 Mg/yr (740 tpy) of VOC, which is less than four percent of the total reported VOC (an average of about 0.5 Mg/yr (0.5 tpy) per facility) in ozone nonattainment areas. The fact that the CTG addresses

more than 96 percent of the VOC emissions from miscellaneous metal and plastic parts surface coating facilities in ozone nonattainment areas further supports our conclusion that a CTG is more likely to achieve the intended VOC emission reduction goal for these product categories than a national rule.

Upon considering the above factors in light of the facts and circumstances associated with these product categories, we propose to determine that a CTG for miscellaneous metal and plastic parts surface coating facilities will be substantially as effective as a national regulation.

III. Auto and Light-Duty Truck Assembly Coatings

A. Industry Characterization

1. Source Category Description

This category of consumer and commercial products includes the coatings that are applied to new automobile or new light-duty truck bodies, or body parts for new automobiles or new light-duty trucks.[12] These bodies or body parts may be made of metal or plastic. The large majority of these coatings are specifically formulated, marketed and sold for this end use and are applied at automobile or light-duty truck assembly plants. However, this CAA section 183(e) category also includes coatings applied at facilities that perform these coating operations on a contractual basis. This category does not include coatings used at plastic or composites molding facilities as described in the Surface Coating of Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII). Automobile and light-duty truck coatings enhance a vehicle's durability and appearance. Some of the coating system characteristics that automobile and light-duty truck manufacturers test for include adhesion, water resistance, humidity resistance, salt spray resistance, color, gloss, acid etch resistance, and stone chip resistance. The primary coatings used are electrodeposition primer (EDP), primer-surfacer (including anti-chip coatings), topcoat (basecoat and clearcoat) and final repair.

Sealers, deadeners, transit coatings and cavity waxes used in the production of new automobiles and new light-duty trucks are included in the miscellaneous metal and plastic parts coatings categories and are addressed in the draft CTG for miscellaneous metal products and plastic parts coatings. Adhesives, glass bonding primers and glass bonding adhesives used in the production of new automobiles and new light-duty trucks are included in the miscellaneous industrial adhesives product category and are addressed in the draft CTG for miscellaneous industrial adhesives. In the draft CTG, however, we seek comments on whether the use of these materials in the production of new automobiles and new light-duty trucks should instead be included in the auto and light-duty truck assembly coatings category and addressed in the CTG for auto and light-duty truck assembly coatings. In addition, in the draft CTG, we seek comments, including supporting VOC content information, on appropriate control recommendations specifically for the use of these materials in the production of new automobiles and new light-duty trucks if EPA were to include such use of these materials in the auto and light-duty truck assembly coatings category and address them in the CTG for automobile and light-duty truck assembly coatings.

2. Processes, Sources of VOC Emissions, and Controls

The VOC emissions from automobile and light-duty truck surface coating operations are primarily a result of evaporation of the VOC contained in the coatings and cleaning materials used in these operations.[13] The primary VOC emissions from automobile and light-duty truck surface coatings occur during coating application/flash-off and curing/drying of the coatings. The remaining emissions are mainly from mixing and/or thinning. The VOC emissions from mixing and thinning of coatings occur from displacement of VOC-laden air in containers used to mix coatings containing solvents (thinners) prior to coating application. The displacement of VOC-laden air can also occur during filling of containers and can be caused by changes in temperature, changes in barometric pressure, or agitation during mixing.

The VOC emissions from coating application occur when solvent evaporates from the coating as it is being applied to the vehicle part or body. The transfer efficiency (the percent of coating solids applied to the automobile or light-duty truck body or body part) of a coating application method affects the amount of VOC emitted during coating application. A coating application method that is more efficient in transferring coatings to the substrate will reduce the volume of coatings (and therefore solvents) needed per given amount of production; thus reducing VOC emissions.

Before coatings are applied, the body of an automobile or light-duty truck is assembled, anticorrosion operations are performed, and any plastic parts to be finished with the body are installed. A series of coatings are applied to protect the metal surface from corrosion and assure good adhesion of subsequent coatings. First, an EDP coating is applied to the body using a method in which a negatively charged automobile or light-duty truck body is immersed in a positively charged bath of waterborne EDP. The coating particles (resin and pigment) migrate toward the body and are deposited onto the body surface, creating a strong bond between the coating and the body to provide a durable coating. Once the coating application deposition is completed, the body is rinsed in a succession of individual spray and/or immersion rinse stations and then dried with an automatic air blow-off. Following the rinsing stage (including the automatic air blow-off), the deposited coating is cured in an electrodeposition curing oven.

After curing, the body is further water-proofed by sealing spot-welded joints of the body. After sealing, the body proceeds to the anti-chip booth where anti-chip coatings are applied to protect the vulnerable areas of the body. Next, a primer-surfacer coating is applied. The purpose of the primer-surfacer coating is to provide ''filling'' or hide minor imperfections in the body, provide additional protection to the vehicle body, and bolster the appearance of the topcoats. Primer-surfacer coatings are applied by spray application in a water-wash spray booth. Following application of the primer-surfacer, the body is baked to cure the film, minimize dirt pickup, and reduce processing time.

The next step of the coating process is the spray application of the topcoat, which usually consists of a basecoat (color) and a clearcoat. The purpose of the clearcoat is to add luster and durability to the vehicle finish and protect the total coating system against solvents, chemical agents, water,

[12] Please see 40 CFR 63.3176 (the NESHAP for Surface Coating of Automobiles and Light-Duty Trucks) for the definitions of ''automobiles'' and ''light-duty trucks.''

[13] In a previous notice, EPA stated that the cleaning operations associated with certain specified 183(e) consumer and commercial product categories, including automobile and light duty-truck assembly coatings, would not be covered by EPA's 2006 CTG for industrial cleaning solvents (71 FR 44522 and 44540, August 4, 2006) * * *. In the notice, EPA expressed its intention to address cleaning operations associated with these categories in the CTGs for these specified categories if the EPA determines that a CTG is appropriate for a respective category * * *. Accordingly, the draft CTG for auto and light-duty truck assembly coatings category addresses VOC emissions from cleaning operations associated with this product category.

weather, and other environmental effects.

After the topcoat (i.e., a basecoat and a clearcoat) is applied, the automobile or light-duty truck body or body parts proceed to a flash-off area, where a certain level of solvent evaporation occurs. This step is designed to prevent bubble formation during curing in the bake oven. After flash-off, the automobile and light-duty truck bodies or body parts are then dried/cured in bake ovens.

The amount of VOC emissions from the flash-off area depends on the type of coating used, how quickly the component or product moves through the flash-off area, and the distance between the application area and the bake oven. For liquid spray applications, it is estimated that 65–80 percent of the volatiles are emitted during the application and flash-off operations, and the remaining 20–35 percent from the curing/drying operation.

After curing of the topcoat, the vehicle proceeds to final assembly. If necessary, the fully assembled vehicle proceeds to final repair, where coatings are applied and other operations are performed to correct damage or imperfections in the coating. The coatings applied during final repair are cured at a lower temperature than that used for curing primer-surfacer and topcoat. The lower cure temperature is necessary to protect heat-sensitive components on completely assembled motor vehicles.

Until the 1970's, the majority of coatings used in the automobile and light-duty truck manufacturing industry were conventional solvent-borne coatings, with high VOC content. Due to a combination of regulation at the State and Federal level, technology development and competitive factors, the industry has steadily moved to lower VOC content coatings. These alternative coatings include powder coatings, waterborne coatings, and higher solids coatings. The utilization of these alternative coatings in conjunction with efficient spray application equipment, such as electrostatic spray, is the primary method that is currently being used at auto and light-duty truck surface coating operations to reduce VOC emissions from the coatings. In addition, many facilities control the exhaust from their bake ovens. Some facilities have also employed partial spray booth controls by venting spray booth emissions, principally from automated spray zones, through an add-on control device such as an oxidizer or hybrid (concentrator followed by an oxidizer) control system.

Powder anti-chip and primer-surfacer coatings are used at some automobile and light-duty truck assembly plants. Powder coating produces minimal amounts of VOC emissions. Powder coating is applied via powder delivery systems, which in most cases is an electrostatic spray. Because powder coatings are applied as dried particles, no VOC are released during the application operation. Depending on the powder formulation, some volatile emissions may occur when the powder is heated during the curing step. In any event, any volatile emissions from the heating of powder coatings would generally be much less than the volatile emissions from the heating of liquid coatings during the curing operations. Powder coating applications are best suited for long production runs of consistently sized parts without color changes.

Waterborne coatings produce minimal VOC emissions primarily because a large portion of the VOC solvent carrier is replaced with water. Waterborne EDPs are used at almost every automobile and light-duty truck assembly plant. Waterborne primer-surfacer and waterborne basecoat are used at some automobile and light-duty truck assembly plants. Waterborne primer-surfacer and waterborne basecoat are applied by a combination of manual and automatic, and electrodeposition and non-electrodeposition spray techniques.

Higher solids coatings contain more solids than ''conventional'' (pre-1980) coatings. These coatings reduce VOC emissions because they contain less VOC solvent per unit volume of solids than conventional solvent-borne coatings. Thus, a lesser amount of VOC emissions are released during coating preparation, application, and curing to deliver a given amount of coating solids. Higher solids primer-surfacer and basecoat are used at some automobile and light-duty truck assembly plants. Higher solids clearcoat is used at every automobile and light-duty truck assembly plant. Higher solids primer-surfacer and basecoat are applied by a combination of manual and automatic, and electrodeposition and non-electrodeposition spray techniques.

As previously mentioned, another source of VOC emissions from automobile and light-duty truck surface coating operations is cleaning materials. The VOC are emitted when solvents evaporate from the cleaning materials during use. Cleaning materials are used for several purposes, including the cleaning of spray guns, transfer lines (e.g., tubing or piping), tanks, and the interior of spray booths, and cleaning other unwanted materials from equipment related to coating operations. These cleaning materials are typically mixtures of organic solvents.

Work practices are widely used throughout the automobile and light-duty truck manufacturing industry to reduce VOC emissions from cleaning operations. These measures include covering mixing tanks, storing solvents and solvent soaked rags and wipes in closed containers, and cleaning spray guns in an enclosed system. Low-VOC content or low vapor pressure cleaning materials are used for certain cleaning activities. However, there is insufficient information available to correlate VOC content or vapor pressure to specific cleaning steps.

3. Existing Federal, State, and Local VOC Control Strategies

Three previous EPA actions addressed automobile and light-duty truck surface coating operations.

- CTG for Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks (1977).
- New Source Performance Standard for Automobile and Light-Duty Truck Surface Coating Operations, 40 CFR part 60, subpart MM (1980).
- National Emission Standards for Hazardous Air Pollutants for Surface Coating of Automobile and Light-Duty Trucks, 40 CFR 63, subpart IIII (2004).

In 1977, EPA issued a CTG document entitled ''Control of Volatile Organic Emissions from Existing Stationary Sources Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks'' (EPA–450/2–77–008). The 1977 CTG and subsequent implementation guidance provided RACT recommendations for controlling VOC emissions from automobile and light-duty trucks surface coating operations. These recommendations are summarized in Table 1.

TABLE 1.—1977 CTG RECOMMENDED VOC EMISSION LIMITS FOR AUTOMOBILE AND LIGHT-DUTY TRUCK SURFACE COATING

EDP operation	0.14 kg VOC/liter (1.2 lbs/gal) of coating, excluding water and exempt compounds, or 0.17 kg VOC/liter (1.4 lb VOC/gallon) of coating solids deposited.
Primer-surfacer (guide coat) operation	1.8 kg VOC/liter (15.1 lb VOC/gallon) of coating solids deposited.
Topcoat operation	1.8 kg VOC/liter (15.1 lb VOC/gallon) of coating solids deposited.
Final repair operation	0.58 kg VOC/liter (4.8 lbs/gal) of coating, excluding water and exempt compounds.

In 1980, EPA promulgated an NSPS for surface coating of automobile and light-duty trucks (40 CFR part 60 subpart MM). Due to the differences in emission limit formats, the NSPS and the 1977 CTG limits cannot be compared. The NSPS established the emission limits calculated on a monthly basis for each primecoat operation, guidecoat (primer-surfacer) operation, and topcoat operation located in an automobile or light-duty truck assembly plant constructed, reconstructed, or modified after October 5, 1979 (Table 2). The NSPS does not apply to plastic body component coating operations or to all-plastic automobile or light-duty truck bodies coated on separate coating lines. The VOC emission limit for EDP primecoat operations depends on the solids turnover ratio (R_t). The solids turnover ratio is the ratio of total volume of coating solids added to the EDP system in a calendar month to the total volumetric design capacity of the EDP system.

TABLE 2.—1980 NSPS VOC EMISSION LIMITS FOR AUTOMOBILE AND LIGHT-DUTY TRUCK SURFACE COATING

Primecoat Operations (Non-EDP)	0.17 kg VOC/liter (1.42 lb/gal) coating solids applied.		
	When $R_t = \geq 0.16$:	When $0.040 \leq R_t < 0.160$:	When $R_t < 0.040$:
Primecoat Operations (EDP)	0.17 kg VOC/liter (1.42 lb/gal) coating solids applied.	$0.17 \times 350^{0.160 - Rt}$kg VOC/liter ($0.17 \times 350^{0.160-Rt} \times 8.34$ lb/gal) coating solids applied.	No VOC emission limit.
Guidecoat Operations (including the guide coat application, flash-off area, and oven).	1.40 kg VOC/liter (11.7 lb/gal) coating solids applied.		
Topcoat Operations (including topcoat application, flash-off area, and oven).	1.47 kg VOC/liter (12.3 lb/gal) coating solids applied.		

In 2004, EPA promulgated the National Emissions Standards for Hazardous Air Pollutants: Surface Coating of Automobile and Light-Duty Trucks, 40 CFR, part 63, subpart IIII. The areas covered by the NESHAP include all the equipment used to apply coating to new automobile or light-duty truck bodies or body parts and to dry or cure the coatings after application; all storage containers and mixing vessels in which vehicle body coatings, thinners, and cleaning materials are stored and mixed; all manual and automated equipment and containers used for conveying vehicle body coatings, thinners, and cleaning materials; and all storage containers and all manual and automated equipment and containers used to convey waste materials generated by an automobile and light-duty truck surface coating operation.

The 2004 NESHAP for automobile and light-duty truck surface coating established organic HAP emission limitations calculated on a monthly basis for existing sources. More stringent limits apply to new sources, which are sources that commence construction after December 24, 2002. The limits for automobile and light-duty truck surface coating for existing and new sources are summarized in Table 3 below.

TABLE 3.—2004 NESHAP HAP EMISSION LIMITS FOR AUTOMOBILE AND LIGHT-DUTY TRUCK SURFACE COATING

Combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operation plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source.	0.060 kg organic HAP/liter of coating solids deposited (0.50 lb/gal) for new or reconstructed affected sources. 0.132 kg organic HAP/liter of coating solids deposited (1.10 lb/gal) for existing affected sources.
Combined EDP, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operation plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source.	0.036 kg organic HAP/liter of coating solids deposited (0.30 lb/gal) for new or reconstructed affected sources. 0.072 kg organic HAP/liter of coating solids deposited (0.60 lb/gal) for existing affected sources.

The 2004 NESHAP requires that facilities develop and implement a plan to minimize HAP emissions from cleaning operations for automobile and light-duty truck surface coating. The NESHAP also requires that facilities

utilize work practices to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, cleaning materials, and from handling waste materials generated by the coating operation.

In addition to the EPA actions mentioned above, 14 States and California's Bay Area District, where the only automobile and light-duty trucks manufacturing facility in California is located, have regulations that control VOC emissions from surface coating operations. These State RACT rules have VOC emission limits equivalent to the 1977 CTG recommended limits or the NSPS limits.

B. Recommended Control Techniques

The proposed CTG recommends: VOC emission limits for coating operations; work practices for storage and handling of coatings, thinners, and coating waste materials; and work practices for the handling and use of cleaning materials. The recommended VOC limits are based on 2006 and 2007 data from currently operating automobile and light-duty truck surface coating operations, and the work practices recommendations mirror those found in the NESHAP.

During the development of the 2004 NESHAP, EPA identified 65 automobile and light-duty truck assembly facilities operating in 1999. For the development of this CTG, The Alliance of Automobile Manufacturers, an industry trade association representing the majority of these facilities, provided information from member companies and submitted this information to EPA. Non-member companies also provided information to EPA. Information was provided for 56 facilities. The information included VOC emission rates for EDP, primer-surfacer, and topcoat operations on a daily and monthly average for the calendar years 2006 and 2007. Most facilities also provided data showing maximum and minimum daily values, as well.

1. Applicability

The draft CTG recommends certain control techniques for reducing VOC emissions from automobile and light-duty truck surface coatings and cleaning materials. We are recommending that these control options apply to surface coating facilities that emit 6.8 kg VOC/day (15 lb VOC/day or 3 tpy) or more before consideration of control.

We do not recommend these control approaches for facilities that emit below this level because of the very small VOC emission reductions that can be achieved. The recommended threshold level is equivalent to the evaporation of approximately two gallons of solvent per day. Such a level is considered to be an incidental level of solvent usage that could be expected even in facilities that use very low-VOC content coatings. This recommended threshold is also consistent with our recommendations in many previous CTGs.

Although we do not believe that our recommendations are appropriate for auto and light-duty truck facilities that emit less than the applicability threshold recommended above, we believe that all auto and light-duty truck facilities emit at or above that level of VOC.

The draft CTG also recommends that States consider structuring their RACT rules to provide facilities that coat bodies and/or body parts of heavy vehicles [14] with the option of meeting either the State requirements for automobile and light-duty truck coating category or the requirements for miscellaneous metal products coatings category or the plastic parts coatings category. As mentioned in section II.B of this notice, heavy vehicle coatings are included in the Miscellaneous Metal Products and Plastic Parts Coatings categories under section 183(e) and are therefore covered in the draft CTG for Miscellaneous Metal and Plastic Parts Coatings. We note, however, that some automobile and light-duty truck surface coating facilities also coat heavy vehicle bodies or body parts for heavier vehicles. The heavy vehicle bodies or body parts for heavier vehicles may be coated using the same equipment and materials that are used to coat automobile and light-duty truck bodies or body parts for automobiles and light-duty trucks. The permit requirements for the heavier vehicle portion of these combined use paint shops are often structured in the same way as permit requirements for automobile and light-duty truck paint shops. Also, some facilities that coat only heavier vehicle bodies or body parts for heavier vehicles have paint shops that are designed and operated in the same manner as paint shops that are used to coat automobile and light-duty truck bodies and body parts for automobiles and light-duty trucks. The permit requirements for these heavier vehicle paint shops are often structured in the same way as permit requirements for automobile and light-duty truck paint shops. In light of the above, providing heavier vehicle coating facilities with the option of meeting the State RACT requirements for the automobile and light-duty truck coating category in lieu of the requirements for Miscellaneous Metal Products or Plastic Parts categories will provide for the most consistency with existing permit requirements and simplify compliance demonstration requirements for these facilities. Furthermore, in light of the stringency of our recommended control measures in the draft Auto and Light-Duty Truck CTG, we believe that facilities that choose this alternative will achieve at least equivalent, if not greater, control of VOC emissions. For the reasons stated above, we recommend that States RACT rules provide heavier vehicle coating facilities the option of meeting either the State requirements for miscellaneous metals and plastic parts coatings or the requirements for auto and light-duty truck coatings.

2. Coatings

The VOC emission limits recommended in the draft CTG are based on the data supplied by the Alliance of Automobile Manufacturers member companies and other manufacturers in 2008. These recommendations are more stringent than existing State RACT rules which are based on the 1977 CTG or the NSPS limits.

In conjunction with our recommended VOC emission limits for primer-surfacer and topcoat, we recommend in the draft CTG that facilities follow the procedures and calculations in a draft revised ''Automobile Topcoat Protocol'' for determining the daily VOC emission rates of automobile and light-duty truck primer-surfacer and topcoat operations. In 1988, EPA published a document titled ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations'' (EPA–450/3–88–018). This document is commonly referred to as the Automobile Topcoat Protocol. The Automobile Topcoat Protocol provides procedures and calculations for determining the daily VOC emission rate of an automobile and light-duty truck topcoat operation. The 1988 protocol has been adopted into many State regulations and permits, and is also referenced in the National Emissions Standards for Hazardous Air Pollutants: Surface Coating of Automobile and Light-Duty Trucks, 40 CFR, part 63, subpart IIII. Most automobile and light-duty truck facilities use the 1988 protocol for both their topcoat and primer-surfacer operation.

In conjunction with the draft CTG we have prepared a draft revision of the Automobile Topcoat Protocol. The draft

[14] Heavy vehicles include all vehicles that are not automobiles or light-duty trucks, as those terms are defined at 40 CFR 63.3176 (the NESHAP for Surface Coating of Automobiles and Light-Duty Trucks).

revised protocol includes new sections on accounting for control of spray booth emissions and instructions for applying the protocol to primer-surfacer operations. As mentioned above, we recommend in the draft CTG that facilities refer to the procedures and calculations in the draft revised protocol for determining the daily VOC emission rate of automobile and light-duty truck primer-surfacer and topcoat operations. We plan to issue the final revised protocol concurrently with the final CTG. After the final revised protocol has been issued, we plan to amend the NESHAP for Automobile and Light-Duty Trucks (40 CFR part 63, subpart IIII) to replace the references to the 1988 protocol with references to the revised protocol.

The draft CTG recommends the following VOC emission limits to reduce VOC emissions from the coatings during the coating operations:

- EDP operations (including application area, spray/rinse stations, and curing oven): 0.084 kg VOC/liter of deposited solids (0.7 lb VOC/gal deposited solids) on a monthly average basis.
- Primer-surfacer operations (including application area, flash-off area, and oven): 1.44 kg of VOC/liter of deposited solids (12.0 lbs VOC/gal deposited solids) on a daily average basis as determined by following the procedures in the draft revised Automobile Topcoat Protocol.
- Topcoat operations (including application area, flash-off area, and oven): 1.44 kg VOC/liter of deposited solids (12.0 lb VOC/gal deposited solids) on a daily average basis as determined by following the procedures in the draft revised Automobile Topcoat Protocol.
- Final repair: 0.58 kg VOC/liter of coating (4.8 lb VOC/gallon of coating) less water and less exempt solvents.

The categories reflect the current processes that are used at automobile and light-duty truck surface coating facilities. In addition to the individual limits described above for primer-surfacer and topcoat operations, the draft CTG recommends that State RACT rules provide sources with the option of a single emission limit for combined primer-surfacer and topcoat operations because in many facilities these processes are becoming indistinguishable from each other. The recommended alternative limit for combined primer-surfacer and topcoat applications is as follows:

- Combination of primer-surfacer and topcoat operations: 1.44 kg VOC/liter of deposited solids (12.0 lb VOC/gal deposited solids) on a daily average basis as determined by following the procedures in the draft revised Automobile Topcoat Protocol.

All of the recommended emission limits described above reflect the combined use of low-VOC content coatings, effective application equipment, and control devices. Additionally, the CTG recommends work practices to reduce emissions from coating operations, such as covering open containers.

3. Cleaning Materials and Operations

The draft CTG recommends work practices to reduce VOC emissions from cleaning materials used in automobile and light-duty truck surface coating operations. The draft CTG recommends that, at a minimum, these work practices include the following: (1) Store all VOC-containing cleaning materials and used shop towels in closed containers; (2) ensure that mixing and storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials; (3) minimize spills of VOC-containing cleaning materials; (4) convey cleaning materials from one location to another in closed containers or pipes; and (5) minimize VOC emissions from cleaning of application, storage, mixing, and conveying equipment by ensuring that application equipment cleaning is performed without atomizing the cleaning solvent outside of an enclosure and that all spent solvent is captured in closed containers.

The draft CTG also recommends that facilities develop and implement plans to minimize VOC emissions from cleaning operations and from purging of equipment associated with all coating operations for which the draft CTG recommends an emission limit. The draft CTG recommends that the plans specify the practices and procedures for minimizing VOC emissions from the following operations: Vehicle body wiping, coating line purging, flushing of coating systems, cleaning of spray booth grates, cleaning of spray booth walls, cleaning of spray booth equipment, and cleaning external spray booth areas. The recommended plan in the draft CTG is an enhancement of the plan required in the NESHAP, and not an entirely new plan. Most elements of the NESHAP plan, which is designed to reduce organic HAP emissions, are also effective in reducing VOC emissions and are therefore included in our work practice plan recommendation in the draft CTG.

C. Impacts of Recommended Control Techniques

Auto and light-duty truck coating facilities have reduced the VOC emissions from their coating operations to comply with the NSPS, NESHAP, and State rules. The recommended VOC emission rates described above reflect the control measures that are currently being implemented by these facilities, which surpass requirements in the NSPS and State rules based on the 1977 CTG. Consequently, there is no additional cost to implement the draft CTG recommendations. For the same reason, we do not anticipate additional VOC emission reduction.

The draft CTG also recommends work practices for reducing VOC emissions from both coatings and cleaning materials. We believe that our work practice recommendations in the draft CTG will result in a net cost savings. Implementing work practices reduces the amount of coatings and cleaning materials used by decreasing evaporation.

D. Considerations in Determining Whether a CTG will be Substantially as Effective as a Regulation

In determining whether to issue a national rule or a CTG for the product category of automobile and light-duty truck surface coatings under CAA section 183(e)(3)(C), we analyzed the four factors identified above in section I.D in light of the specific facts and circumstances associated with this product category. Based on that analysis, we propose to determine that a CTG will be substantially as effective as a rule in achieving VOC emission reductions in ozone nonattainment areas from automobile and light-duty truck surface coatings and associated cleaning materials.

This section is divided into two parts. In the first part, we discuss our belief that the most effective means of achieving VOC emission reductions in this category is through controls at the point of use of the product, (i.e., through controls on the use of coatings and cleaning materials at automobile and light-duty truck surface coating facilities), and this control can be accomplished only through a CTG. We further explain that the recommended approaches in the draft CTG are consistent with existing effective EPA, State, and local VOC control strategies. In the second part, we discuss how the distribution and place of use of the products in this category also support the use of a CTG. We also discuss the likely VOC emission reductions associated with a CTG, as compared to

a regulation. We further explain that there are control approaches for this category that result in significant VOC emission reductions and that such reductions could only be obtained by controlling the use of the products through a CTG. Such reductions could not be obtained through a regulation under CAA section 183(e) because the controls affect the end-user, which is not a regulated entity under CAA section 183(e)(1)(C). For these reasons, which are described more fully below, we believe that a CTG will achieve greater VOC emission reductions than a rule for this category and therefore satisfy the criterion in section 183(e)(3)(C) of being substantially as effective as regulations in reducing VOC emissions in ozone nonattainment areas.

1. The Most Effective Entity to Target for VOC Reductions and Consistency With Existing Federal, State, and Local VOC Strategies

To evaluate the most effective entity to target for VOC reductions, it is important first to identify the primary sources of VOC emissions and the strategies used to reduce these VOC emissions. There are two main sources of VOC emissions from automobile and light-duty truck surface coatings and associated cleaning materials: (1) Evaporation of VOC from coating application, drying, and curing; and (2) evaporation of VOC from cleaning of spray booths and application equipment. We address each of these sources of VOC emissions, in turn, below, as we discuss the CTG versus regulation approach.

a. *Coatings.* As previously mentioned, VOC emissions from the coatings can be effectively controlled through the use of a combination of measures, including low-VOC content coatings, effective application equipment, add-on controls, and work practices. Pursuant to CAA section 183(e)(1)(C) and (e)(3)(B), the regulated entities subject to a national rule would be the coating manufacturers and suppliers, not the automobile and light-duty truck surface coating facilities. The VOC content of automobile and light-duty truck coatings is within the control of the coating manufacturers and suppliers. A national rule regulating coating manufacturers and suppliers, therefore, could contain limits for the as-sold VOC content of automobile and light-duty truck coatings. However, the coating application equipment, add-on controls and work practices used at automobile and light-duty truck surface coating facilities are not within the control of the coating manufacturers and suppliers. A national rule regulating coating manufacturers and suppliers, therefore, could not require or otherwise ensure that automobile and light-duty truck coating facilities use improved application methods, add-on controls, or work practices to reduce VOC emissions.

A CTG, on the other hand, affects the end-users of the coating materials and, therefore, can implement all of the control measures identified above. The draft CTG recommends emission limits for automobile and light-duty truck surface coating operations based on the combined effects of the use of low-VOC content coatings, improved transfer efficiency and add-on controls. The recommended emission limits reflect the same levels of coating VOC content that would be required by a national rule should we decide to issue a rule, plus additional VOC reductions through the use of efficient coating application and add-on controls. The draft CTG also recommends certain work practices to further reduce VOC emissions from the coatings used in automobile and light-duty truck surface coating operations. Given the significant reductions achievable through the use of these recommended control measures, the most effective entity to address VOC emissions from automobile and light-duty truck surface coatings is the facility using the coatings.

These control measures are consistent with existing EPA, State, and local emission control strategies applicable to automobile and light-duty truck surface coating. Previous EPA actions and existing State and local regulations that address automobile and light-duty truck surface coating similarly considered the combined effect of the use of low-VOC content coatings, improved transfer efficiency, add-on controls, and work practices. Accordingly, we are including these recommended control measures in the draft CTG that applies to automobile and light-duty truck surface coating facilities as the end-users of the coating materials.

b. *Cleaning Materials.* There are two primary means to control VOC emissions associated with the cleaning materials used in the automobile and light-duty truck surface coating process: (1) Limiting the VOC content or VOC vapor pressure of the cleaning materials, and (2) implementing work practices governing the use of the cleaning materials. A national rule could require that manufacturers of cleaning materials for automobile and light-duty truck surface coating operations provide low-VOC content or low vapor pressure cleaning materials. However, the effect of such a national rule could be easily subverted because it could not guarantee that only those low-VOC content or low vapor pressure cleaning materials would be used for cleaning associated with automobile and light-duty truck surface coating. Many cleaning materials used in automobile and light-duty truck surface coating operations are not specifically marketed by the supplier as cleaning materials specific for use at automobile and light-duty truck surface coating operations. Nothing in a national rule that specifically regulates manufacturers and suppliers of cleaning materials specified for use in automobile and light-duty truck surface coating operations would preclude the automobile and light-duty truck surface coating industry from purchasing bulk solvents or other multipurpose cleaning materials from other vendors. The general availability of bulk solvents or multipurpose cleaning materials from vendors that would not be subject to such regulation would directly undermine the effectiveness of such a national regulation.

The more effective approach for reducing VOC emissions from cleaning materials used by automobile and light-duty truck surface coaters is to control the use of cleaning materials through work practices. The draft CTG recommends work practices to reduce VOC emissions from cleaning materials used in automobile and light-duty truck surface coating operations. The draft CTG recommends that, at a minimum, these work practices include the following: (1) Store all VOC-containing cleaning materials and used shop towels in closed containers; (2) ensure that mixing and storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials; (3) minimize spills of VOC-containing cleaning materials; (4) convey cleaning materials from one location to another in closed containers or pipes; and (5) minimize VOC emissions from cleaning of application, storage, mixing, and conveying equipment by ensuring that application equipment cleaning is performed without atomizing the cleaning solvent outside of an enclosure and that all spent solvent is captured in closed containers. The draft CTG also recommends that facilities develop and implement plans to minimize VOC emissions from cleaning operations and from purging of equipment associated with all coating operations for which the draft CTG recommends an emission limit.

Given the significant VOC reductions achievable through the implementation of work practices, we conclude that the most effective entity to address VOC

emissions from cleaning materials used in automobile and light-duty truck surface coating operations is the facility using the cleaning materials during surface coating operations. This recommendation is consistent with measures required by Federal, State and local jurisdictions for reducing VOC emissions from cleaning materials used in automobile and light-duty truck surface coating operations and Federal rules for HAP cleaning.

We cannot, however, issue a rule requiring such work practices for automobile and light-duty truck surface coating facilities because, pursuant to CAA section 183(e)(1)(C) and (e)(3)(B), the regulated entities subject to a national rule would be the cleaning materials manufacturers and suppliers and not the automobile and light-duty truck surface coating facilities. Accordingly, we are including these work practices in the draft CTG that applies to automobile and light-duty truck surface coating facilities as the end-users of the cleaning materials.

Based on the sources of VOC emissions from the automobile and light-duty truck surface coating operations and the available strategies for reducing such emissions, the most effective means of achieving VOC emission reductions from this product category is through controls at the point of use of the products (i.e., through controls on automobile and light-duty truck surface coating facilities). This strategy can be accomplished only through a CTG. The recommended approaches described in the draft CTG are also consistent with effective existing EPA, State, and local VOC control strategies for automobile and light-duty truck surface coating operations. These two factors alone demonstrate that a CTG will be substantially as effective as a national regulation.

2. The Product's Distribution and Place of Use and Likely VOC Emission Reductions Associated With a CTG Versus a Regulation

The factors described in the above section, taken by themselves, weigh heavily in favor of the CTG approach. The other two factors relevant to the CAA section 183(e)(3)(C) determination only further confirm that a CTG will be substantially as effective as a national regulation for automobile and light-duty truck surface coatings and associated cleaning materials.

First, automobile and light-duty truck surface coatings and associated cleaning materials are used at commercial facilities in specific, identifiable locations. Specifically, these materials are used in commercial facilities that apply surface coating to automobiles and light-duty trucks as described in section III.A. This stands in contrast to other consumer products, such as architectural coatings, that are widely distributed and used by innumerable small users (*e.g.*, individual consumers in the general public). Because the VOC emissions are occurring at commercial manufacturing facilities, implementation and enforcement of controls concerning the use of these products are feasible. Therefore the nature of the products' place of use further counsels in favor of the CTG approach.

Second, a CTG will achieve greater emission reduction than a national rule for each source of VOC emissions from automobile and light-duty truck surface coatings and associated cleaning materials. A CTG will achieve greater VOC emission reduction because it can provide for the highly effective emission control strategies described above that are applicable to the end-users of the coatings and cleaning materials at automobile and light-duty truck surface coating facilities. Specifically, the draft CTG recommends emission limits for automobile and light-duty truck surface coating operations based on the combined effects of the use of low-VOC content coatings, improved transfer efficiency, and add-on control devices. It also recommends work practices that would further reduce VOC emissions from coating operations as well as reducing VOC emissions from cleaning materials associated with the coating operations. These significant VOC reductions could not be obtained through a national regulation, because they require the implementation of measures by the end-user. For the reasons stated above, it is more effective to control VOC emissions from coatings and cleaning materials used for automobile and light-duty truck surface coating through a CTG than through a national regulation.

The number of automobile and light-duty truck surface coating facilities affected by our recommendations in this draft CTG further supports our proposed determination pursuant to section 183(e)(3)(C) that a CTG would be substantially as effective as a rule in controlling VOC emissions for this product category. We recommend the control measures described in the draft CTG for automobile and light-duty truck surface coating facilities that emit 6.8 kg VOC/day (15 lb VOC/day or 3 tpy) or more VOC. Based on the April 2004 ozone nonattainment designations, we estimate that all of the automobile and light-duty truck surface coating facilities located in ozone nonattainment areas emit 6.8 kg VOC/day (15 lb VOC/day or 3 tpy) or more. Therefore, we expect that our recommendations in the draft CTG would apply to all automobile and light-duty truck surface coating facilities in ozone nonattainment areas.

Upon considering the above factors in light of the facts and circumstances associated with this product category, we propose to determine that a CTG will be substantially as effective as a national regulation for reducing VOC emissions from automobile and light-duty truck surface coatings and associated cleaning materials in ozone nonattainment areas.

IV. Fiberglass Boat Manufacturing Materials

A. Industry Characterization

1. Source Category Description

This category of consumer and commercial products includes the materials used to manufacture fiberglass boats. Fiberglass is also known as fiber reinforced plastic (FRP). These materials are used to build all types and sizes of boats ranging from small kayaks, canoes, and rowboats, up to large yachts over 100 feet in length. The types of boats manufactured include both powerboats and sailboats, and most are for recreation. However, these materials are also used to build boats for commercial, government, and military uses.

2. Processes, Sources of VOC Emissions, and Controls

The VOC emissions from fiberglass boat manufacturing are a result of evaporation of the VOC contained in the laminating resins, gel coatings, and cleaning materials [15] used to manufacture fiberglass boats. These VOC are primarily styrene and methyl methacrylate (MMA) added to resin and gel coats as diluents and cross linking agents. Boats made from FRP are typically manufactured in a process known as open molding. Separate molds are used for the boat hull, deck, and miscellaneous small FRP parts such as fuel tanks, seats, storage lockers, and hatches. The parts are built on or inside the molds using glass roving, cloth, or

[15] As noted above, in a previous notice, EPA stated that the cleaning operations associated with certain specified section 183(e) consumer and commercial product categories, including fiberglass boat manufacturing, would not be covered by EPA's 2006 CTG for industrial cleaning solvents (71 FR 44522 and 44540, August 4, 2006). In the notice, EPA expressed its intention to address cleaning operations associated with these categories in the CTGs for these specified categories if the EPA determines that a CTG is appropriate for the respective categories. Accordingly, the draft CTG for the fiberglass boat manufacturing category addresses the VOC emissions from cleaning operations associated with this product category.

mat that is saturated with a thermosetting liquid resin such as unsaturated polyester or vinylester resin. The liquid resin is mixed with a catalyst before it is applied to the glass, which causes a cross-linking reaction between the resin molecules. The catalyzed resin hardens to form a rigid shape consisting of the plastic resin reinforced with glass fibers.

a. *Processes.* The FRP boat manufacturing process generally follows the following production steps:

(1) Before each use, the molds are cleaned and polished and then treated with a mold release agent that prevents the part from sticking to the mold.

(2) The open mold is first spray-coated with a pigmented polyester resin known as a gel coat. The gel coat will become the outer surface of the finished part. The gel coat is mixed with a catalyst as it is applied with a spray gun so that it will harden. The gel coat is applied to a thickness of about 18 mils (0.018 inches).

(3) After the gel coat has hardened, the inside of the gel coat is coated with a thin ''skin'' coat of polyester resin and short glass fibers and then rolled with a metal or plastic roller to compact the fibers and remove air bubbles. The skin coat fibers are randomly oriented and form a layer about 90 mils (0.09 inches) thick that is intended to prevent distortion of the gel coat (known as ''print through'') from the subsequent layers of fiberglass and resin.

(4) After the skin coat has hardened, additional glass reinforcement in the form of chopped fibers and woven fiberglass cloth is applied to the inside of the mold and saturated with catalyzed polyester resin. The resin is usually applied with either mechanical spray or flow coating equipment, or by hand using a bucket and brush or paint-type roller.

(5) The saturated fabric is then rolled with a metal or plastic roller to compact the fibers and remove air bubbles.

(6) More layers of woven glass or glass mat and resin are applied until the part is the desired thickness; the part is then allowed to harden while still in the mold. The final thickness of the part, for example, may be about 0.25 inches for the hull of a small motorboat, up to one or two inches thick for the hull of a large yacht.

(7) After the resin has cured, the part is removed from the mold and the edges are trimmed to the final dimensions.

(8) The different FRP parts of the boat are assembled using more fiberglass and resin, adhesives, or mechanical fasteners.

(9) Flotation foam is typically injected into closed cavities in the hulls of smaller boats to make the boat unsinkable and capable of floating if swamped.

(10) After the assembly of the hull is complete, the electrical and mechanical systems and the engine are installed along with carpeting, seat cushions, and other furnishings and the boat is prepared for shipment.

(11) Some manufacturers paint the topsides of their boats to obtain a superior finish or paint the bottoms to prevent marine growth.

(12) Larger boats generally also require extensive interior woodwork and cabin furnishings to be installed.

Resins and gel coats are also used to produce the prototypes and molds (or ''tools'') that are used in manufacturing fiberglass boats. These ''tooling'' resins and gel coats are different from production materials and are specially formulated for greater strength, hardness, and dimensional stability compared to production materials.

b. *Sources of VOC Emissions.* The primary VOC emissions from fiberglass boat manufacturing are styrene and MMA released during resin and gel coat application and curing, as well as emissions from evaporation of the VOC contained in the materials used during cleaning activities, such as spray gun cleaning and cleaning of other equipment. VOC emissions from cleaning and polishing molds, resin and gel coat storage and handling, and waste storage and handling are small. There are no wastewater streams associated with fiberglass boat manufacturing that may produce VOC emissions.

As mentioned above, although small, some VOC emissions occur during the handling and storage of resin and gel coat. These VOC emissions occur from displacement of VOC-laden air in containers used to store and mix materials before application. The displacement of VOC-laden air can occur during the filling of containers. It can also be caused by changes in temperature or barometric pressure, or by agitation during mixing.

The majority of VOC emissions occur during resin and gel coat application. The resins contain styrene, which acts as a solvent and a cross-linking agent. Gel coats contain both styrene and MMA; MMA also acts as a solvent and cross-linking agent. A fraction of each compound evaporates during resin and gel coat application and curing. Not all of the styrene and MMA evaporate because a majority of these compounds are bound in the cross-linking reaction between polymer molecules in the hardened resin or gel coat and become part of the finished product.

The fraction of VOC that is emitted from resin and gel coat materials is dependent on several factors, including the initial VOC content of the material, the application method, and the thickness of the part or layer that is curing. VOC emission rates are usually expressed in terms of lb VOC emitted per ton of material applied (lb/ton). VOC evaporation from gel coats is higher than from resins because gel coats are applied in thinner coats, which increases evaporation. When material is applied in thicker layers, the overlying material impedes evaporation from the underlying material, so a higher fraction is bound up during the cross linking reactions before it has a chance to evaporate.

Higher VOC materials also tend to emit a higher fraction of the VOC than lower VOC materials. Therefore, lowering the VOC content of the resin or gel coat has a two-fold effect: First, it decreases the amount of VOC that could be emitted, and second, a smaller fraction of the VOC that is present is emitted to the atmosphere.

The type of application equipment used also affects the fraction of VOC that is emitted. Spray application equipment that atomizes the resin as it is applied creates droplets with a high surface-to-volume ratio, which increases the amount of VOC that evaporates during application. Non-atomizing application methods minimize the surface area during application and reduce VOC emission rates. These non-atomizing methods include resin flow coaters, which create consolidated streams of resin (like a shower head) instead of atomized droplets, and pressure fed resin rollers that apply resin directly onto the part. Non-atomized application is not currently feasible for gel coat application and gel coat is currently spray-applied in almost all cases. The only exception is gel coat that may be applied with a brush or roller to the interior areas of finished boats where the cosmetic appearance is not as critical as on the exterior.

Resin and gel coat application equipment requires solvent cleaning to remove uncured resin or gel coat when not in use. If the equipment is not flushed and cleaned after each use, the resin or gel coat will catalyze inside and on the exterior of the application equipment within a few minutes.

c. *Controls.* Reducing VOC emissions from fiberglass boat manufacturing materials is achieved primarily by reducing the VOC content of the materials (resin and gel coat) and by switching to non-atomizing resin application methods. Industry and EPA-sponsored testing has experimentally

measured the amount of VOC that is emitted, and equations have been developed to predict the VOC emission rates (lb VOC/ton of material applied) for different materials and application methods.[16]

The different resins and gel coats can be reformulated to achieve varying levels of lowered VOC contents, depending on their use in boat manufacturing. Because reducing the VOC content reduces emissions by two interacting mechanisms (reducing the amount of VOC available to be emitted and by reducing the fraction of VOC that is emitted), VOC emission reduction is not linearly related to VOC content. For example, reformulating a laminating resin from 40 percent VOC, by weight, to 35 percent VOC, achieves a 28 percent VOC emission reduction if the resin is spray-applied.

Changing resin application methods can also reduce VOC emissions. For example, switching from spray application to nonatomizing application of a resin with 35 percent styrene achieves a 41 percent emission reduction. If both styrene content and application method are changed to reduce emissions, the reductions can be greater than changing just resin styrene content or application method alone. For example, changing from a spray-applied resin with 40 percent styrene, to one with 35 percent styrene that is applied with nonatomizing technology can achieve a 58 percent emission reduction.

Currently nonatomizing technology is feasible for applying production and tooling resins only. Gel coats must still be applied with atomizing spray guns, so VOC reductions from gel coat can only be achieved through use of low-VOC gel coats. The control methods for reducing VOC emissions from resin and gel coat application are described in more detail in the draft CTG.

Another method to reduce VOC emissions is the use of closed molding. Closed molding is the name given to fabrication techniques in which reinforced plastic parts are produced between the halves of a two-part mold or between a mold and a flexible membrane, such as a bag. There are four types of closed molding methods that are being used in fiberglass boat manufacturing: Vacuum bagging, vacuum-assisted resin transfer molding, resin transfer molding, and compression molding with sheet molding compound. Closed molding processes as they are currently practiced cannot reduce emissions during gel coat or skin coat application because these steps must still use conventional open molding techniques. However, closed molding can be used to reduce VOC emissions from the subsequent laminating steps after the gel coat and skin coat layers have been applied. Closed molding is generally applicable to making a large number of small parts, such as hatches and locker doors, or small numbers of high performance boat hulls and decks, but it is not feasible to replace open molding at all types of boat manufacturers. However, one major fiberglass boat manufacturer has developed a patented closed molding process that has replaced open molding for the hulls of many of its smaller (17 to 22 feet long) powerboats.

The majority of VOC emissions from open molding with resin and gel coat occur in an open shop environment, although some gel coat spraying for smaller parts may be done in a spray booth. The volume of air exhausted from the open shop or from spray booths is typically high, and the VOC concentration is typically low. Therefore, it is generally not cost-effective to use add-on controls to reduce VOC emissions from fiberglass boat manufacturing. Because of the wide availability and lower cost (compared to add-on controls) of low-VOC content materials and alternative application equipment/methods, these materials and application equipment/methods are used instead to reduce VOC emissions from fiberglass boat manufacturing facilities. In addition, work practices (e.g., using closed mixing containers) are used throughout the fiberglass boat manufacturing industry to reduce VOC emissions from containers used to mix manufacturing materials containing VOC. These work practices are described in the draft CTG.

To control VOC emissions from cleaning materials, water-based emulsifiers with low-VOC contents, as well as organic solvents (e.g., dibasic esters) with low vapor pressures, are used.

3. Existing Federal, State, and Local VOC Control Strategies

There are two previous EPA actions that address fiberglass boat manufacturing.

- Assessment of VOC Emissions from Fiberglass Boat Manufacturing (1990).
- National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing (2001).

In 1990, we completed an ''Assessment of VOC Emissions from Fiberglass Boat Manufacturing'' (EPA/600/S2–90/019). This document characterized the fiberglass boat manufacturing industry and its processes, assessed the extent of VOC emissions from this industry, and evaluated various control options. The assessment described open molding and discussed types of closed molding in use at the time. The assessment determined that acetone (no longer considered a VOC) and styrene were the two VOCs primarily emitted from the industry, and the major sources of emissions were resin and gel coat application, and evaporation of solvents during cleanup.

The 1990 document discussed process changes and add-on controls to reduce emissions. Specifically, the 1990 document recommended substituting the high-VOC resins and gel coats that were commonly used at that time with low-VOC resins and gel coats and vapor suppressed resins. The document discussed add-on controls but considered such controls not economically feasible for use in boat manufacturing due to high exhaust flow rates and low VOC concentrations. The document also recommended using water-based emulsifiers and low vapor pressure dibasic ester compounds for equipment cleaning.

The second action was the 2001 NESHAP for boat manufacturing (40 CFR Part 63, subpart VVVV). The 2001 NESHAP applies to fiberglass boat manufacturers using the processes and materials listed below:

- All open molding operations, including pigmented gel coat, clear gel coat, production resin, tooling resin, and tooling gel coat;
- All closed molding resin operations;
- All resin and gel coat application equipment cleaning; and
- All resin and gel coat mixing operations.

The 2001 NESHAP regulates the total HAP content in the materials used in each regulated operation. Specifically, the 2001 NESHAP sets a HAP content limit for each regulated open molding resin and gel coat operation. For each regulated open molding resin operation, the NESHAP established separate HAP content limits for atomized and nonatomized resin application methods. For closed molding operations, no limits apply to the resin application operation if it meets the specific definition of closed molding provided in the NESHAP. If a molding operation does not meet the definition of closed molding that is provided in the

[16] This testing was done in conjunction with the development of the NESHAP for boat manufacturing (40 CFR 63, subpart VVVV) and the NESHAP for reinforced plastic composite manufacturing (40 CFR 63, subpart WWWW). The equations that were developed were incorporated into both of these final NESHAP.

NESHAP, then it must comply with the applicable emission limits for open molding. The emission limitations in the 2001 NESHAP are described in more detail in the actual CTG document.

A manufacturer can demonstrate compliance with the 2001 NESHAP by either (1) demonstrating compliance with the individual HAP content limit for each type of open molding operation, (2) averaging emissions among resin and gel coat operations using equations provided in the NESHAP that would estimate the emissions from each operation, or (3) using an add-on control device. Even though add-on controls are not used for fiberglass boat manufacturing, this last option was included in case feasible control technology became available. Compliance with each HAP content limit in the first option can be demonstrated by using only compliant materials within a regulated operation, or demonstrating compliance based on the weighted-average HAP content for all materials used within an operation.

In addition to the resin and gel coating open molding operations which, as described above, are subject to HAP content limits, other operations are subject to either work practice requirements or HAP content limits in the 2001 NESHAP. These operations include resin and gel coat mixing operations in containers, and routine resin and gel coat application equipment cleaning operations.

Very few State and local regulations exist that apply to VOC emissions from the fiberglass boat manufacturing industry. The existing State and local regulations apply to all fiberglass manufacturing operations, and do not distinguish fiberglass boat manufacturing from the manufacturing of other products made from fiberglass. The SCAQMD has the most comprehensive regulation, but it is not as stringent as the 2001 NESHAP. Since styrene and MMA are the primary VOC from resin and gel coat and are also HAP, the HAP limits in the NESHAP and the VOC limits in State and local rules can be compared directly. Specifically, SCAQMD Rule 1162 (Polyester Resin Operations) contains VOC content limits for specific types of resins, gel coats, and cleaning solvents. Furthermore, SCAQMD Rule 1162 requires that all resins be applied with nonatomizing techniques, such as resin rollers, flow coaters, or hand layup. SCAQMD Rule 1162 also requires that gel coat be applied with high efficiency spray equipment, such as HVLP, air assisted airless, or electrostatic spray. The San Diego, Santa Barbara, and Bay Area Districts also have rules covering these operations, but tend to be less stringent than SCAQMD Rule 1162. State rules for Maryland and the Chicago area of Illinois also limit the VOC content of resins and gel coats, but these are also less stringent than the 2001 NESHAP. These State and local rules are summarized in more detail in the draft CTG.

B. Recommended Control Techniques

The draft CTG recommends certain control techniques for reducing VOC emissions from fiberglass boat manufacturing materials. As explained in the draft CTG, we are recommending these control options for the fiberglass boat manufacturing facilities that emit 6.8 kg VOC/day (15 lb VOC/day or 3 tpy) or more.

We do not recommend these control approaches for facilities that emit below this level because of the very small VOC emission reductions that can be achieved. The recommended threshold level is equivalent to the evaporation of approximately two gallons of styrene per day, or the spray application of about 150 lbs of resin. Such a level is considered to be an incidental level of material usage that could be expected even in facilities that perform only boat repair and maintenance, where only small amounts of material are used each day, rather than manufacturing. Furthermore, based on the 2002 NEI data and the 2004 ozone nonattainment designations, facilities emitting below the recommended threshold level collectively emit less than four percent of the total reported VOC emissions from fiberglass boat manufacturing facilities in ozone nonattainment areas. For these reasons, we did not extend our recommendations in the draft CTG to these low emitting facilities. This recommended threshold is also consistent with our recommendations in many previous CTGs.

For purposes of determining whether a facility meets the 6.8 kg VOC/day (15 lb VOC/day or 3 tpy) threshold, aggregate emissions from all fiberglass boat manufacturing and related cleaning activities at a given facility are included.

1. Resin and Gel Coat

Based on a review of the 2001 NESHAP, and the current State and local requirements discussed above, we are recommending VOC content limits and alternative VOC emission rate limits for resin and gel coats used in open molding operations. The VOC content limits are paired with specific methods (either atomized or non-atomized) for resin application.

The CTG provides flexibility by recommending the same options for meeting the VOC limits as provided in the 2001 NESHAP for meeting the HAP emission limits. To meet the recommended open molding resin and gel coat limits, the CTG recommends three options: (1) Achieving the individual VOC content limit through the use of low-VOC materials, either by using only low-VOC materials within a covered operation (listed in the CTG), or by averaging the VOC contents for all materials used within an operation on a weight-adjusted basis; (2) meeting numerical emission rate limits, which would enable a facility to average emissions among different operations using equations to estimate emission rates from each operation based on the material and application method; or (3) using add-on controls to achieve a numerical VOC emission rate that is determined for each facility based on the mix of application methods and materials used at that facility.

Our recommended VOC content limits under Option 1 are as follows:

For this material—	And this application method—	The recommended maximum weighted average VOC content (weight percent) is
Production resin	Atomized (spray)	28
Production resin	Nonatomized (nonspray)	35
Pigmented gel coat	Any method	33
Clear gel coat	Any method	48
Tooling resin	Atomized (spray)	30
Tooling resin	Nonatomized (nonspray)	39
Tooling gel coat	Any method	40

As mentioned above, a facility may show that a relevant content limit is met by averaging the VOC contents for all materials used within an operation on a weight-adjusted basis. To facilitate this option, the draft CTG provides an equation for determining the weighted average VOC content for a particular open molding resin or gel coat material.

The emission reductions that are achieved using the emissions averaging option (Option 2) and the add-on control option (Option 3) are equivalent to the emission reductions that are achieved meeting the VOC content limits (Option 1). Options 2 and 3 use emission factor equations to convert the VOC content limits in Option 1 into equivalent emission rates that a facility would otherwise achieve by using the low VOC materials for specific application methods and operations.

A facility could use emission averaging (Option 2) or add-on controls (Option 3) for all open molding operations or only for some of the operations. Operations that a facility decides not to include in Options 2 or 3 would need to use Option 1. For filled resins (i.e., resins to which fillers are added to acheive certain physical propderties), the CTG includes an adjustment factor that would allow filled resins to use any of the three options recommended above.

2. Mixing Drums and Cleaning Materials

To control VOC emissions from mixing drums, the draft CTG recommends that resin and gel coat mixing drums have covers with no visible gaps, and that these covers be kept in place at all times except when depositing or removing materials, or inserting or removing mixing equipment. This is the same practice required by the 2001 NESHAP, and is the most stringent control option that is technically and economically feasible. We do not recommend the use of covers for smaller containers because they are typically only used for small hand application operations that require an open container.

The draft CTG also recommends that materials used for routine resin and gel coat application equipment cleaning must contain no more than 5.0 percent VOC by weight, or must have a composite vapor pressure no greater than 0.50 mm Hg at 68 degrees F. These limits for cleaning materials are based on the properties of water-based emulsifiers and dibasic esters that are used as alternatives to conventional cleaning solvents, and are the basis for the equipment cleaning requirements in the 2001 NESHAP. Therefore, the same cleaning materials used to comply with the 2001 NESHAP will meet the recommendations in this CTG.

As mentioned above, both the work practice and the cleaning material VOC limit recommendations in the draft CTG are based on the 2001 NESHAP, which are more stringent than the requirements in other State and local actions. Based on the implementation of these measures by all major source fiberglass boat manufacturers, we believe that these control measures are technically and economically feasible for reducing VOC emissions from these cleaning materials and have therefore included them as our recommendations in the draft CTG.

C. Impacts of Recommended Control Techniques

Based on the 2002 NEI database, we estimate that there are 223 fiberglass boat manufacturing facilities in the U.S. Using the April 2004 ozone nonattainment designations, 91 of these facilities are in ozone nonattainment areas. Based on the 2002 NEI VOC emissions data, we estimated that 67 of the 91 facilities in ozone nonattainment areas emitted VOC at or above the recommended 6.8 kg VOC/day (15 lb VOC/day or 3 tpy) VOC emissions applicability threshold. These 67 facilities, in aggregate, emit about 1,452 Megagrams per year (Mg/yr) (1,601 tons per year (tpy)) of VOC per year, or an average of about 22 Mg/yr (24 tpy) of VOC per facility.

The draft CTG recommends the use of low-VOC content resin and gel coats for each type of open molding operation, based on the 2001 NESHAP. This recommendation also includes the use of covers to further reduce VOC emissions from mixing drums and the use of low-VOC and low-vapor pressure cleaning materials. Those facilities that are major sources of HAP are already complying with the 2001 NESHAP and have already adopted these control measures. Therefore, we do not anticipate additional VOC emission reductions from these major source facilities. Because the 2001 NESHAP does not apply to area sources (i.e., sources that are not major sources of HAP), we assume that area source fiberglass boat manufacturing facilities are not currently implementing the measures provided in the 2001 NESHAP and recommended in the draft CTG. We estimate that 23 area source fiberglass boat manufacturing facilities are located in ozone nonattainment areas and meet the applicability threshold recommended in the draft CTG, and that these facilities emit, in aggregate, 104 Mg/yr (115 tpy) of VOC.

For implementing the 2001 NESHAP, the EPA estimated a cost of $3,600 per ton of HAP reduced, in 2001 dollars, or about $4,200 in 2007 dollars. Nearly all of the HAP that are reduced by the NESHAP are styrene and MMA, and styrene and MMA also account for nearly all of the VOC emitted from the processes addressed by the recommendations in the draft CTG. Therefore, we expect that the cost to reduce HAP and VOC are nearly equal.

However, we expect that the cost of reducing VOC through the measures recommended in the draft CTG would be substantially lower than the cost of reducing HAP through the 2001 NESHAP for several reasons. First, the NESHAP is now fully implemented at major sources of HAP, and resin, gel coat, and cleaning materials that are compliant with the 2001 NESHAP are readily available to all sizes of facilities. Second, the industry has experienced a shift to non-atomized resin application methods that are required to comply with the 2001 NESHAP. This shift has occurred at all sizes of facilities because of the productivity and economic benefits of using non-atomizing methods over conventional atomizing methods. Therefore, with respect to those facilities that are not subject to the 2001 NESHAP, we expect that most, if not all, are already using the materials and methods recommended by the draft CTG. We therefore expect that these facilities would incur little, if any, increased costs if required by a State RACT rule to implement the approaches recommended in the draft CTG. We estimate that the total cost for the 23 facilities to implement the recommended measures in the draft CTG would be substantially less than $168,000 in 2007 dollars. The impacts are further discussed in the draft CTG document.

D. Considerations in Determining Whether a CTG Will Be Substantially as Effective as a Regulation

In determining whether to issue a national rule or a CTG for the product category of fiberglass boat manufacturing materials under CAA section 183(e)(3)(C), we analyzed the four factors identified above in section I.D in light of the specific facts and circumstances associated with this product category. Based on that analysis, we propose to determine that a CTG will be substantially as effective as a rule in achieving VOC emission reductions in ozone nonattainment areas from fiberglass boat manufacturing materials.

This section is divided into two parts. In the first part, we discuss our belief

that the most effective means of achieving VOC emission reductions in this category is through controls at the point of use of the product, (i.e., through controls on the use of resin, gel coat, and cleaning materials at fiberglass boat manufacturing facilities), and this control can be accomplished only through a CTG. We further explain that the recommended approaches in the draft CTG are consistent with existing effective EPA, State, and local VOC control strategies. In the second part, we discuss how the distribution and place of use of the products in this category also support the use of a CTG. We also discuss the likely VOC emission reductions associated with a CTG, as compared to a regulation. We further explain that there are control approaches for this category that result in significant VOC emission reductions and that such reductions could only be obtained by controlling the use of the products through a CTG. Such reductions could not be obtained through a regulation under CAA section 183(e) because the controls affect the end-user, which is not a regulated entity under CAA section 183(e)(1)(C). For these reasons, which are described more fully below, we believe that a CTG will achieve greater VOC emission reductions than a rule for this category.

1. The Most Effective Entity to Target for VOC Reductions and Consistency With Existing Federal, State, and Local VOC Strategies

To evaluate the most effective entity to target for VOC reductions, it is important first to identify the primary sources of VOC emissions. There are two main sources of VOC emissions from fiberglass boat manufacturing: (1) evaporation of VOC from resins and gel coats; and (2) evaporation of VOC from cleaning materials. We address each of these sources of VOC emissions, in turn, below, as we discuss the CTG versus regulation approach.

a. *Resin and Gel Coat Materials.* A national rule could contain limits for the as-sold VOC content of resin and gel coat materials that are marketed for use in fiberglass boat manufacturing. However, the effect of such a rule could be easily subverted because it could not guarantee that fiberglass boat manufacturers would use only low-VOC fiberglass boat manufacturing materials. There is a broad diversity of resin and gel coat materials used in boat manufacturing. Many resin and gel coat materials used in fiberglass boat manufacturing are also used to manufacture other fiberglass products and are not specifically marketed by the supplier as materials for fiberglass boat manufacturing. Therefore, fiberglass boat manufacturing facilities could purchase and use high-VOC resins and gel coats not specified for use in fiberglass boat manufacturing. This practice would effectively nullify the reformulation actions of the manufacturers and suppliers of fiberglass boat manufacturing materials, resulting in no net change in VOC emissions in ozone nonattainment areas.

By contrast, a CTG can affect the end-users of the coating materials in the fiberglass boat manufacturing industry and, therefore, can implement the control measures that are more likely to achieve the objective of reducing VOC emissions from this product category in ozone nonattainment areas. As previously discussed, the draft CTG recommends VOC content limits for fiberglass boat manufacturing operations that can be achieved through the use of either low-VOC content resins and gel coats or add-on controls. In addition, the recommendations in the draft CTG include the use of covers on mixing drums to further reduce VOC emissions from resin and gel coat materials. These practices have been shown to effectively reduce VOC emissions beyond the levels achievable using low-VOC materials. These work practices would also reduce emissions beyond the levels achievable using an add-on control device since the emissions points that are affected by the work practices, such as mixing drums, would not be located in the enclosure that is vented to the control device. Given the significant reductions achievable through the use of these recommended control measures, the most effective entity to address VOC emissions from fiberglass boat manufacturing is the facility using the VOC-containing materials.

The recommended control measures are consistent with existing EPA, State, and local VOC control strategies applicable to fiberglass boat manufacturing. As mentioned above, previous EPA actions and existing State and local regulations (in particular, the regulations in the majority of the California air Districts that address fiberglass boat manufacturing) similarly call for VOC emission reduction through the use of low-VOC content materials. Some also include work practices and specific application methods. We cannot, however, issue a national rule directly requiring fiberglass boat manufacturing facilities to use low-VOC content materials or specific application methods or to implement work practices to reduce VOC emissions because, pursuant to CAA section 183(e)(1)(C) and (e)(3)(A), the regulated entities subject to a national rule would be the material manufacturers and suppliers, not the fiberglass boat manufacturing facilities. By contrast, a CTG can reach the end-users of fiberglass boat manufacturing materials and, therefore, can implement the control recommendations for these users that are identified above as more likely to achieve the intended VOC emission reduction goal. Accordingly, we are including these control measures in the draft CTG that applies to fiberglass boat manufacturing facilities as the end-users of the resin and gel coat materials.

b. *Application Equipment Cleaning Materials.* The most common method to control VOC emissions associated with the application equipment cleaning materials used in the fiberglass boat manufacturing process is to limit the VOC content or VOC vapor pressure of the cleaning materials. A national rule requiring that manufacturers of cleaning materials for fiberglass boat manufacturing operations to provide low-VOC content or low vapor pressure (*i.e.*, replacing VOC that have a high vapor pressure with low vapor pressure VOC) cleaning materials would suffer from the same deficiencies noted above with regard to the resin and gel coat materials. Specifically, nothing in a national rule that specifically regulates manufacturers and suppliers of cleaning materials specified for use in fiberglass boat manufacturing operations would preclude the fiberglass boat manufacturing industry from purchasing bulk solvents or other multipurpose cleaning materials from other vendors. The general availability of bulk solvents or multipurpose cleaning materials from vendors that would not be subject to such regulation would directly undermine the effectiveness of such a national regulation.

The more effective approach for reducing VOC emissions from application equipment cleaning materials is to control the types of cleaning materials. The draft CTG recommends that fiberglass boat manufacturing facilities use low-VOC or low vapor pressure cleaning materials. Given the significant VOC reductions achievable through the use of low-VOC or low vapor pressure cleaning materials, we conclude that the most effective entity to address VOC emissions from cleaning materials used in fiberglass boat manufacturing operations is the facility using the cleaning materials. This recommendation is consistent with measures required by State and local jurisdictions for reducing VOC emissions from cleaning materials used

in fiberglass boat manufacturing operations.

We cannot, however, issue a rule requiring the use of low-VOC application equipment cleaning materials for fiberglass boat manufacturing facilities because, pursuant to CAA section 183(e)(1)(C) and (e)(3)(A), the regulated entities subject to a national rule would be the cleaning materials manufacturers and suppliers and not the fiberglass boat manufacturing facilities. Accordingly, we are including the recommendation to use low-VOC cleaning materials in the draft CTG that applies to fiberglass boat manufacturing facilities as the end-users of the cleaning materials.

Based on the nature of the fiberglass boat manufacturing process, the sources of significant VOC emissions from this process, and the available strategies for reducing such emissions, the most effective means of achieving VOC emission reductions from this product category is through controls at the point of use of the products, (*i.e.*, through controls on fiberglass boat manufacturing facilities), and such controls can be implemented only through a CTG. The recommended controls described in the draft CTG are also consistent with effective existing EPA, State, and local VOC control strategies for fiberglass boat manufacturing operations. These two factors alone demonstrate that a CTG will be substantially as effective as a national regulation under CAA section 183(e) in addressing VOC emissions from this product category in ozone nonattainment areas.

2. The Product's Distribution and Place of Use and Likely VOC Emission Reductions Associated With a CTG Versus a Regulation

The factors described in the above section, taken by themselves, weigh heavily in favor of the CTG approach. The other two factors relevant to the CAA section 183(e)(3)(C) determination only further confirm that a CTG will be substantially as effective as a national regulation for fiberglass boat manufacturing.

First, fiberglass boat manufacturing resins and gel coats and associated cleaning materials are used at commercial facilities in specific, identifiable locations. Specifically, these materials are used in commercial facilities that build fiberglass boats as described in section III.A. This stands in contrast to other consumer products, such as architectural coatings, that are widely distributed and used by innumerable small users (*e.g.*, individual consumers in the general public). Because the VOC emissions are occurring at commercial manufacturing facilities, implementation and enforcement of controls concerning the use of these products are feasible. Therefore the nature of the products' place of use further counsels in favor of the CTG approach.

Second, a CTG will achieve greater emission reduction than a national rule for each source of VOC emissions from fiberglass boat manufacturing and associated cleaning materials. For the reasons described above, we believe that a national rule limiting the VOC content in the resin, gel coat and cleaning materials used in fiberglass boat manufacturing operations would result in little VOC emissions reduction. By contrast, a CTG can achieve significant VOC emissions reduction because it can provide for the highly effective emission control strategies described above that are applicable to the end-users of the resin, gel coat, and cleaning materials at fiberglass boat manufacturing facilities. Specifically, the draft CTG can provide for the use of low-VOC materials, specific application methods, and work practices. The significant VOC reductions associated with these measures could not be obtained through a national regulation, because they are achieved through the implementation of measures by the end-user. In addition, as previously explained, strategies that arguably could be implemented through rulemaking, such as limiting the VOC contents of the resin, gel coat, and cleaning materials used in fiberglass boat manufacturing, are far more effective if implemented directly at the point of use of these materials. For the reasons stated above, it is more effective to control the VOC contents of the resin, gel coat, and cleaning materials used for fiberglass boat manufacturing through a CTG than through a national regulation.

Furthermore, the number of fiberglass boat manufacturing facilities affected by our recommendations in this draft CTG, as compared to the total number of such facilities in ozone nonattainment areas, does not affect our conclusion that the CTG would be substantially more effective than a rule in controlling VOC emissions for this product category. We recommend the control measures described in the draft CTG for fiberglass boat manufacturing facilities that emit 6.8 kg VOC/day (15 lb VOC/day or 3 tpy) or more VOC. Based on the April 2004 ozone nonattainment designations, we estimate that 67 of the 91 fiberglass boat manufacturing facilities located in ozone nonattainment areas emit 6.8 kg VOC/day (15 lb VOC/day or 3 tpy) or more and are therefore addressed by our recommendations in the draft CTG. There are 24 fiberglass boat manufacturing facilities that would not be covered by the recommendations in the draft CTG. According to the 2002 NEI database, these 24 facilities collectively emitted less than 12.7 Mg/yr (14 tpy) of VOC, which is less than one percent of the total reported VOC (1,465 Mg/yr (1,615 tpy)) in ozone nonattainment areas. The fact that the CTG addresses more than 99 percent of the VOC emissions from fiberglass boat manufacturing facilities in ozone nonattainment areas further supports our conclusion that a CTG is more likely to achieve the intended VOC emission reduction goal for this product category than a national rule.

Upon considering the above factors in light of the facts and circumstances associated with this product category, we propose to determine that a CTG for fiberglass boat manufacturing facilities will be substantially as effective as a national regulation.

V. Miscellaneous Industrial Adhesives

A. Industry Characterization

1. Source Category Description

The miscellaneous industrial adhesives product category includes adhesives (including adhesive primers used in conjunction with certain types of adhesives) used at a wide variety of industrial manufacturing and repair facilities that operate adhesives application processes.

The miscellaneous industrial adhesives product category does not include adhesives that are addressed by CTGs already issued for categories listed under CAA Section 183(e) or by earlier CTGs. These include the CTGs issued under Section 183(e) for aerospace coatings; metal furniture coatings; large appliance coatings; flat wood paneling coatings; paper, film, and foil coatings; offset lithographic printing and letterpress printing; and flexible package printing. Coil coating, fabric coating, and rubber tire manufacturing were not listed under CAA Section 183(e); however, they were the subject of earlier CTGs which address adhesives used in those processes. In addition, the miscellaneous industrial adhesives category does not include adhesives and adhesive primers that are subject to the National Volatile Organic Compound Emission Standards for Consumer Products, 40 CFR part 59, subpart C.

Adhesives, glass bonding primers, and glass bonding adhesives applied to new automobile or new light-duty truck bodies, or body parts for new automobiles or new light-duty trucks are included in the miscellaneous industrial adhesives product category and are

addressed in the draft CTG for miscellaneous industrial adhesives. In the draft CTG, however, we seek comments on whether the use of these materials in the production of new automobiles and new light-duty trucks should be included in the miscellaneous industrial adhesives product category and addressed in the CTG for miscellaneous industrial adhesives, or in the auto and light-duty truck assembly coatings category.

Adhesives are used for joining surfaces in assembly and construction of a large variety of products. Adhesives allow for faster assembly speeds, less labor input, and more ability for joining dissimilar materials than other fastening methods. The largest use of adhesives is for manufacture of pressure sensitive tapes and labels. Other large industrial users are automobile manufacturing, packaging laminating, and shoe construction. Although there are a wide variety of adhesives formulated from a multitude of synthetic and natural raw materials, all adhesives can be generally classified as solution/waterborne, solvent-borne, solventless or solid (e.g., hot melt adhesives), pressure sensitive, or reactive (e.g., epoxy adhesives and ultraviolet-curable adhesives). Adhesives can also be generally classified according to whether they are structural or nonstructural. Structural adhesives are commonly used in industrial assembly processes and are designed to maintain product structural integrity.

2. Processes, Sources of VOC Emissions, and Controls

The VOC emissions from miscellaneous industrial adhesives are a result of evaporation of the solvents contained in many of the primers, adhesives and cleaning materials [17] during adhesive application and drying processes, as well as during surface preparation and cleaning processes associated with adhesives application. The primary VOC emissions from miscellaneous industrial adhesives occur during application, flash-off, and drying. In many cases, the emissions from application and flash-off are removed from these areas with localized ventilation systems. A lesser amount of emissions occur as the adhesive dries. Essentially all of the remaining VOC in the organic solvent contained in the adhesives is emitted during the drying process.

Some VOC emissions also occur during mixing of the adhesives. The VOC emissions from mixing operations occur from displacement of VOC-laden air in containers used to mix adhesives before application. The displacement of VOC-laden air can occur during the filling of containers. It can also be caused by changes in temperature or barometric pressure, or by agitation during mixing.

The primary VOC emissions from the cleaning materials occur during cleaning operations, which include application equipment cleaning and line flushing. VOC emissions from surface preparation (where products and materials are primed and/or cleaned prior to adhesive application), adhesive storage and handling, and waste/wastewater operations (i.e., handling waste/wastewater that may contain residues from both adhesives and cleaning materials) are small.

As mentioned above, the majority of VOC emissions from miscellaneous industrial adhesives occur from evaporation of solvents in the adhesives during application. The transfer efficiency (the percent of adhesive solids deposited on the material or product) of an adhesive application method affects the amount of VOC emissions during adhesive application. The more efficient an adhesive application method is in transferring adhesives to the material or product, the lower the volume of adhesives (and therefore solvents) needed per given amount of production. High transfer efficiency results in lower VOC emissions.

Miscellaneous industrial adhesives may be in the form of a liquid or aerosol product. Liquid adhesives may be applied by means of spray or dip coating. Conventional air atomized spray application systems utilize higher atomizing air pressure and typically have transfer efficiencies ranging between 25 and 40 percent. Dip coating is the immersion of a substrate into a coating bath. The transfer efficiency of a dip coater is very high (approximately 90 percent); however, some VOC is emitted from the liquid coating bath due to its large exposed surface area.

Many spray applied adhesives are electrostatically applied. In electrostatic application, an electrical attraction between the adhesive, which is positively charged, and the grounded substrate enhances the amount of adhesive deposited on the surface. For liquid adhesives, this application method is more efficient than conventional air atomized spray, with transfer efficiency typically ranging from 60 to 90 percent.

Spray applied adhesives are typically applied in a spray booth to capture adhesive overspray, to remove solvent vapors from the workplace, and to keep the application operation from being contaminated by dirt from other operations. In spray application operations, the majority of VOC emissions occur in the spray booth.

Other liquid adhesive application methods used in adhesive application operations include flow coating, roll coating, HVLP spray, electrocoating, autophoretic coating, and application by hand. These application methods are described in more detail in the draft CTG.

After application, the adhesives may be baked or cured in heated drying ovens to speed drying, but many are air dried, especially for some heat-sensitive substrates. The amount of VOC emitted depends on the type of adhesive used, the speed of the application line (i.e., how quickly the substrate moves through the flash-off area), and the distance between the application area and bake oven (if used).

The VOC emissions from the adhesive application process can be reduced through changes in adhesive formulations and application technology. Add-on controls may also be used to reduce VOC emissions from miscellaneous industrial adhesives and cleaning materials. In some cases, add-on controls are used where it is necessary or desirable to use high-VOC materials, but they are also used in combination with low-VOC adhesives and/or more efficient application methods to achieve additional emission reductions.

The trend in control technology for solvent-borne adhesives is not to control emissions from the adhesives, but rather to replace them with low VOC adhesives, some of which can perform as well as solvent-borne adhesives. Since the late 1970s, adhesive formulations that eliminate or reduce the amount of solvent in the formulations have been increasing, thus reducing VOC emissions per unit amount of adhesive used.

Various types of low solvent adhesive include waterborne, hot-melt, solventless two-component, and radiation-cured adhesives. Hot-melt adhesives are the most widely used of these alternative processes.

[17] In a previous notice, EPA stated that the cleaning operations associated with certain specified section 183(e) consumer and commercial product categories, including the miscellaneous industrial adhesives category, would not be covered by EPA's 2006 CTG for industrial cleaning solvents (71 FR 44522 and 44540, August 4, 2006). In the notice, EPA expressed its intention to address cleaning operations associated with these categories in the CTGs for these specified categories if the Agency determines that a CTG is appropriate for the respective categories. Accordingly, the draft CTG for the miscellaneous industrial adhesives addresses VOC emissions from cleaning operations associated with this product category.

The combination of low-VOC adhesive type and an application method with high transfer efficiency, is also an effective measure for reducing VOC emissions. Not only are VOC emissions reduced by using adhesives with low VOC content, the use of an application method with high transfer efficiency, such as electrostatic spraying, lowers the volume of adhesives needed per given amount of production, thus further reducing the amount of VOC emitted during the adhesive application process.

As mentioned above, the majority of VOC emissions from spray application operations occur in the spray booth. The VOC concentration in spray booth exhaust is typically low because a large volume of exhaust air is used to dilute the VOC emissions for safety reasons. Although VOC emissions in spray booth exhaust can be controlled with add-on controls, it is generally not cost effective to do so, due to the large volume of air that must be treated and the low concentration of VOC. On the other hand, the wide availability and lower cost of low-VOC content adhesives makes them a more attractive option. For those situations where an add-on control device can be justified for production or specific adhesive requirements, thermal oxidation and carbon adsorption are most widely used. The draft CTG contains a detailed discussion of these and other available control devices.

To control VOC emissions from containers used to store or mix adhesives containing VOC solvents, work practices (e.g., using closed storage containers) are implemented at facilities that apply miscellaneous industrial adhesives. Work practices are also widely used at these facilities as a means of reducing VOC emissions from cleaning operations. These measures include covering mixing tanks, storing solvents and solvent soaked rags and wipes in closed containers, and cleaning spray guns in an enclosed system. Another means of reducing VOC emissions from cleaning operations is the use of low-VOC content, low vapor pressure, or low boiling point cleaning materials. However, little information is available regarding the effectiveness of the use of these types of cleaning materials at miscellaneous industrial adhesive application processes.

3. Existing Federal, State, and Local VOC Control Strategies

There are no previous EPA actions that address miscellaneous industrial adhesive application operations. However, many California air pollution control districts have adhesives regulations in place, and some States are currently developing regulations.

In 1998, the California ARB issued a guidance document that includes ARB's determination of RACT and best available retrofit control technology (BARCT) for Adhesives and Sealants. The 1998 ARB document presented RACT and BARCT for controlling VOC emissions from the commercial and industrial application of adhesives and sealants. The ARB RACT determination prescribes VOC emission limits for various industrial adhesives and sealants and was developed based on eight existing California air pollution control district rules for adhesives and sealants that were in effect in 1998. Those eight districts included Bay Area (BAAQMD), El Dorado County (EDCAPCD), Placer County (PCAPCD), Sacramento Metropolitan (SMAQMD), South Coast (SCAQMD), Ventura County (VCAPCD), Yolo-Solano (YSAQMD), and San Diego County (SDCAPCD).

The ARB based the majority of its RACT determination on limits already in effect in SCAQMD, BAAQMD, and VCAPCD, and concluded that the VOC limits for adhesives and sealants presented in its RACT determination were achievable and cost-effective. Furthermore, the ARB stated in its RACT determination that most of the adhesive and sealant products being sold in 1998 were already compliant with the VOC limits that were determined to be RACT.

Since the development of the ARB RACT determination, five additional California air pollution control districts have adopted rules based on the ARB RACT standards.

In 2007, the Ozone Transport Commission (OTC) issued a Model Rule for Adhesives and Sealants. The model rule was based almost entirely on the 1998 California ARB RACT determination. The model rule is designed for adoption by member states with compliance dates by 2009. To date, only Maryland has adopted an adhesives rule based on the OTC model rule. Maine and New Jersey are either currently considering adopting or are in the process of adopting the model rule.

Some states regulate VOC emissions from adhesives as part of their regulations for specific surface coating operations.

As discussed above, a total of 13 air pollution control districts in California have established rules for adhesives. The various district adhesives rules do not all contain the same categories and limits as the ARB RACT guidance. Where the categories are the same or similar among these District rules, the SCAQMD rule (i.e., Rule 1168) generally has the most stringent VOC content limits. If add-on controls are used, SCAQMD Rule 1168 requires that the system control at least 80 percent of the VOC emissions. Several California air Districts require the use of specific types of high-efficiency adhesive application methods to further reduce VOC emissions. For example, in addition to limiting the VOC contents in the adhesives, SCAQMD Rule 1168 requires the use of one of the following types of application equipment: Electrostatic application; flow coating; dip coating; roll coating; hand application; high-volume, low-pressure (HVLP) spray; or an alternative method that is demonstrated to be capable of achieving a transfer efficiency equal to or better than 65 percent. At least seven other California District rules that regulate emissions from adhesives similarly require that sources use specified application methods that achieve high transfer efficiency.

At least eight California Districts and Maryland regulate cleaning materials used in adhesive application processes. These regulations require a combination of work practice, equipment standards, and limits on the VOC content, boiling point, or composite vapor pressure of the solvent. Some California District rules allow the use of add-on controls as an alternative to the VOC content/boiling point/vapor pressure limits for cleaning materials. The work practice and equipment standards that have been adopted by California Districts include, for example, using closed containers for storing solvent and solvent containing wipes and rags, using enclosed and automated spray gun washing equipment, and prohibiting atomized spraying of solvent during spray gun cleaning. However, the cleaning material VOC content/boiling point/vapor pressure limits, overall control efficiency requirements, and work practices vary among the District rules.

B. Recommended Control Techniques

The draft CTG recommends certain control techniques for reducing VOC emissions from miscellaneous industrial adhesives and associated cleaning materials. As explained in the draft CTG, we are recommending these control options for facilities with miscellaneous industrial adhesive application processes that emit 6.8 kg VOC/day (15 lb VOC/day) or more before consideration of control. For purposes of determining whether a facility meets the 6.8-kg/day (15-lb/day) threshold, aggregate emissions from all miscellaneous industrial adhesive application operations and related

cleaning activities at a given facility are included.

The draft CTG would not apply to facilities that emit below the threshold level because of the very small VOC emission reductions that would be achieved. The recommended threshold level is equivalent to the evaporation of approximately 2 gallons of solvent per day. Such a level is considered to be an incidental level of solvent usage that could be expected even in facilities that use very low-VOC content adhesives. Furthermore, based on the 2002 NEI data and the 2004 ozone nonattainment designations, facilities emitting below the recommended threshold level collectively emit less than 6 percent of the total reported VOC emissions from facilities with miscellaneous adhesive application operations in ozone nonattainment areas. For these reasons, the draft CTG does not specify control for these low emitting facilities. This recommended threshold is also consistent with our recommendations in many previous CTGs.

1. Adhesives

The draft CTG provides facilities flexibility by recommending various options for controlling VOC emissions. The draft CTG recommends specific VOC emission limits based on application processes (i.e., the types of adhesives and substrates). The draft CTG offers two options for achieving the recommended emission limits: (1) Through the use of low-VOC content adhesives and specified application methods with good adhesive transfer efficiency; or (2) through the use of a combination of low-VOC adhesives, specified application methods, and add-on controls. As an alternative to the emission limits, the draft CTG recommends an overall control efficiency of 85 percent. This alternative provides facilities the operational flexibility to use high efficiency add-on controls instead of low-VOC content adhesives and specified application methods, especially when the use of high VOC adhesives is necessary or desirable for product efficacy. We expect the 85 percent control efficiency recommendation to result in VOC emission reduction that is equivalent to or exceed the reduction from our recommended emission limits. Both the emission limits and the control efficiency recommendations in the draft CTG reflect what we have concluded to be reasonably achievable VOC control measures for miscellaneous industrial adhesives based on our review of Maryland's adhesives rule, the OTC model rule, and the various California air district rules.

The following VOC emission limits are recommended in the draft CTG for general and specialty adhesive application processes and for adhesive primer application processes:

	VOC emission limit	
	(g/l)	(lb/gal)
General Adhesive Application Processes:		
Fiberglass	200	1.7
Flexible vinyl	250	2.1
Metal	30	0.3
Porous Material (Except Wood)	120	1.0
Rubber	250	2.1
Wood	30	0.3
Other Substrates	250	2.1
Specialty Adhesive Application Processes:		
Ceramic Tile Installation	130	1.1
Contact Adhesive	250	2.1
Cove Base Installation	150	1.3
Floor Covering Installation (Indoor)	150	1.3
Floor Covering Installation (Outdoor)	250	2.1
Floor Covering Installation (Perimeter Bonded Sheet Vinyl)	660	5.5
Metal to Urethane/Rubber Molding or Casting	850	7.1
Multipurpose Construction	200	1.7
Plastic Solvent Welding (ABS)	400	3.3
Plastic Solvent Welding (Except ABS)	500	4.2
Sheet Rubber Lining Installation	850	7.1
Single-Ply Roof Membrane Installation/Repair (Except EPDM)	250	2.1
Structural Glazing	100	0.8
Thin Metal Laminating	780	6.5
Tire Retreading	100	0.8
Waterproof Resorcinol Glue	170	1.4
Adhesive Primer Application Processes:		
Automotive Glass Adhesive Primer	700	5.8
Plastic Adhesive Primer	250	2.1
Plastic Solvent Welding Adhesive Primer	650	5.4
Single-Ply Roof Membrane Adhesive Primer	250	2.1
Other Adhesive Primer	250	2.1

The recommended VOC emission limits are expressed as mass of VOC per volume of adhesive or adhesive primer, excluding water and exempt compounds.[18] For general application processes where an adhesive is used to bond dissimilar substrates together, then the applicable substrate category with the highest VOC emission limit is recommended as the limit for such application. For example, in an application process where an adhesive is used to bond flexible vinyl to metal, the recommended VOC emission limit is 250 g/l (2.1 lb/gal).

Our recommended limits are based on the limits in the OTC model rule. As previously mentioned, the emission limits in the OTC rule were California ARB RACT standards, which were

[18] The list of exempt compounds that are considered to be negligibly photochemically reactive in forming ozone can be found in the definition of VOC at 40 CFR 51.100(s).

based on numerous California District rules and adopted by other California District rules. Furthermore, the OTC model rule is intended for adoption by States. In light of the above, we consider the limits in the OTC model rule to be representative of what sources in nonattainment areas nationwide can achieve technically and economically and have therefore adopted these VOC limits as our recommendations in the draft CTG.

As in Maryland's adhesive rule and the OTC model rule, we recommend in the draft CTG that the following types of specialty adhesive application processes be exempt from VOC content limits: Adhesives or adhesive primers being tested or evaluated in any research and development, quality assurance, or analytical laboratory; adhesives or adhesive primers used in the assembly, repair, or manufacture of aerospace or undersea-based weapon systems; adhesives or adhesive primers used in medical equipment manufacturing operations; and cyanoacrylate adhesive application processes.

As mentioned above, we recommend the use of low-VOC adhesives in conjunction with application methods that achieve good adhesive transfer efficiency. Specifically, we recommend the following application methods: Electrostatic spray, HVLP spray, flow coat, roller coat, dip coat including electrodeposition, brush coat, or other adhesive application methods that are capable of achieving a transfer efficiency equivalent or better than that achieved by HVLP spraying.

A further explanation of the emission limits and control efficiency recommendations described above can be found in the draft CTG.

In addition to the recommended control measures described above, the draft CTG recommends the following work practices to further reduce VOC emissions from miscellaneous industrial adhesives: (1) Store all VOC-containing adhesives, adhesive primers, and adhesive-related waste materials in closed containers; (2) ensure that mixing and storage containers used for VOC-containing adhesives, adhesive primers, and adhesive-related waste materials are kept closed at all times except when depositing or removing these materials; (3) minimize spills of VOC-containing adhesives, adhesive primers, and adhesive-related waste materials; and (4) convey adhesives, adhesive primers, and adhesive-related waste materials from one location to another in closed containers or pipes.

2. Cleaning Materials

The draft CTG recommends work practices to reduce VOC emissions from cleaning materials. We recommend that, at a minimum, all of the work practices be included: (1) Store all VOC-containing cleaning materials and used shop towels in closed containers; (2) ensure that mixing and storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials; (3) minimize spills of VOC-containing cleaning materials; (4) convey cleaning materials from one location to another in closed containers or pipes; and (5) minimize VOC emissions from cleaning of application, storage, mixing, and conveying equipment by ensuring that application equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.

C. Impacts of Recommended Control Techniques

Based on the 2002 NEI database, we estimate that there are 1,048 facilities in the U.S. that operate miscellaneous adhesive application processes. Using the April 2004 ozone nonattainment designations, we estimated that 720 of these facilities are in ozone nonattainment areas. Based on the 2002 NEI VOC emissions data, 180 of the 720 facilities in ozone nonattainment areas emitted VOC at or above the recommended 6.8-kg/day (15-lb/day) applicability threshold. These 180 facilities, in aggregate, emit an estimated 4,428 Mg/yr (4,881 tpy) of VOC, or an average of about 24.6 Mg/yr (27.1 tpy) of VOC per facility. As previously mentioned, the emissions from these facilities represent less than 6 percent of the total reported VOC emissions from facilities that operate miscellaneous adhesives application operations in ozone nonattainment areas.

As mentioned above, the draft CTG recommends the emission limits in the OTC model rule. The OTC limits were based on California ARB RACT standards, which were based on eight California Districts' adhesives rules and have been adopted by other California Districts and Maryland. Accordingly, for purposes of estimating the cost effectiveness of our recommendations in the draft CTG, we assume that facilities in California and Maryland are already meeting the recommended emission limits. For facilities in nonattainment areas outside of California and Maryland, we have estimated the total annual control costs of using low-VOC adhesives to be approximately $603,997, and emission reductions will be about 64 percent. These recommended measures are expected to result in a VOC emissions reduction of 2,070 Mg/yr (2,281 tpy), and the cost-effectiveness is estimated to be $292/Mg ($265/ton). The impacts are further discussed in the draft CTG document.

We have concluded that the work practice recommendations in the draft CTG will result in a net cost savings. These work practices reduce the amount of cleaning materials used by decreasing the amount that evaporates and is therefore wasted. Similarly, the adoption of more effective application methods, such as electrostatic spray and other methods recommended in the draft CTG, will reduce adhesive consumption and result in net cost savings compared to conventional spray guns. However, because we cannot determine the extent to which these practices have already been adopted, we cannot quantify these savings. Therefore, these cost savings are not reflected in the above cost impacts.

D. Considerations in Determining Whether a CTG Will Be Substantially as Effective as a Regulation

In determining whether to issue a national rule or a CTG for the miscellaneous industrial adhesive product category under CAA section 183(e)(3)(C), we analyzed the four factors identified above in Section I.D in light of the specific facts and circumstances associated with this product category. Based on that analysis, we propose to determine that a CTG will be substantially as effective as a rule in achieving VOC emission reductions in ozone nonattainment areas from miscellaneous industrial adhesive application operations and associated cleaning materials.

This section is divided into two parts. In the first part, we discuss our conclusion that the most effective means of achieving VOC emission reductions in this CAA section 183(e) product category is through controls at the point of use of the products, (i.e., through controls on the use of adhesive and cleaning materials at miscellaneous industrial adhesive application operations), and these controls can be accomplished only through a CTG. We further explain that the recommended approaches in the draft CTG are consistent with existing effective EPA, State, and local VOC control strategies. In the second part, we discuss how the distribution and place of use of the product in this product category also supports the use of a CTG. We also discuss the likely VOC emission reductions associated with a CTG, as

compared to a regulation. We further explain that there are control approaches for this category that result in significant VOC emission reductions and that such reductions could only be obtained by controlling the use of the products through a CTG. Such reductions could not be obtained through a regulation under CAA section 183(e) because the controls affect the end-user, which is not a regulated entity under CAA section 183(e)(1)(C). For these reasons, which are described more fully below, we believe that a CTG will achieve greater VOC emission reductions than a rule for these categories.

1. The Most Effective Entity To Target for VOC Reductions and Consistency With Existing Federal, State, and Local VOC Strategies

To evaluate the most effective entity to target for VOC reductions, it is important first to identify the primary sources of VOC emissions. There are two main sources of VOC emissions from miscellaneous industrial adhesive application operations: (1) Evaporation of VOC from adhesives; and (2) evaporation of VOC from cleaning materials. We address each of these sources of VOC emissions, in turn, below, as we discuss the CTG versus regulation approach.

a. Adhesives

A national rule would contain limits for the as-sold VOC content of adhesives that are marketed as miscellaneous industrial adhesives. However, the effect of such national rule setting low VOC content limits for miscellaneous industrial adhesives could be easily subverted because a section 183(e) rule could not require that a facility use only those low-VOC content adhesive materials that are specifically marketed for miscellaneous industrial adhesive application operations. Many adhesives used in miscellaneous industrial adhesive application operations are not specifically marketed by the supplier as adhesives for specific products. Therefore, these facilities could purchase and use high-VOC specialty adhesives materials for routine application operations, and this practice would effectively nullify the reformulation actions of the manufacturers and suppliers of low-VOC adhesives, resulting in no net change in VOC emissions in ozone nonattainment areas.

By contrast, a CTG can affect the end users of the adhesive materials and, therefore, can implement the control measures that are more likely to achieve the objective of reducing VOC emissions from this product category in ozone nonattainment areas. Our recommended control options in the draft CTG include, among other things, the use of application methods with high adhesives transfer efficiency and add-on controls. In addition, we recommend that certain work practices be implemented to further reduce VOC emissions from adhesives as well as controlling VOC emissions from cleaning materials. Given the significant reductions achievable through the use of these recommended control measures, the most effective entity to address VOC emissions from miscellaneous industrial adhesives is the facility using the adhesives.

These control measures are consistent with existing State and local VOC control strategies applicable to miscellaneous industrial adhesives. Existing State and local regulations (in particular, the regulations in Maryland and the majority of the California air Districts) that address miscellaneous industrial adhesive application operations similarly call for VOC emission reduction through the use of low-VOC content materials, or the use of control devices in conjunction with high-VOC content adhesive materials. Some State and local VOC control strategies also include work practices and specific application methods.

We cannot, however, issue a national rule directly requiring miscellaneous industrial adhesive application facilities to use low-VOC content adhesives, control devices, specific application methods, or work practices because, pursuant to CAA section 183(e)(1)(C) and (e)(3)(B), the regulated entities subject to a national rule would be the adhesive manufacturers and suppliers, not the miscellaneous industrial adhesive application facilities. By contrast, a CTG can reach the end users of the miscellaneous industrial adhesives and, therefore, can implement the control recommendations for end users that are identified above as more likely to achieve the objective of reducing VOC emissions from these product categories in ozone nonattainment areas. Accordingly, we are including these recommended control measures in the draft CTG that applies to miscellaneous industrial adhesive application facilities as the end users of the adhesives materials.

b. Cleaning Materials

There are two primary means to control VOC emissions associated with the cleaning materials used in the miscellaneous industrial adhesive application process: (1) Limiting the VOC content, boiling point, or VOC vapor pressure of the cleaning materials, and (2) implementing work practices governing the use of the cleaning materials. A national rule requiring that manufacturers of cleaning materials for miscellaneous industrial adhesive application operations provide low-VOC content or low vapor pressure (high boiling point) cleaning materials would suffer from the same deficiencies noted above with regard to the adhesives. Specifically, nothing in a national rule that specifically regulates manufacturers and suppliers of cleaning materials specified for use in adhesive application operations would preclude facilities from purchasing bulk solvents or other multipurpose cleaning materials from other vendors. The general availability of bulk solvents or multipurpose cleaning materials from vendors that would not be subject to such regulation would directly undermine the effectiveness of such a national regulation.

The more effective approach for reducing VOC emissions from cleaning materials used by miscellaneous industrial adhesive application facilities is to control the use of cleaning materials through work practices. The draft CTG recommends that miscellaneous industrial adhesive application facilities implement work practices to reduce VOC emissions from cleaning materials during application operations. Examples of effective work practices are: Keeping solvents and used shop towels in closed containers; using enclosed spray gun cleaners and preventing the atomized spraying of cleaning solvent; minimizing spills of VOC-containing cleaning materials; cleaning up spills immediately; and conveying any VOC-containing cleaning materials in closed containers or pipes. These work practices have proven to be effective in reducing VOC emissions.

Given the significant VOC reductions achievable through the implementation of work practices, we conclude that the most effective entity to address VOC emission from cleaning materials used in miscellaneous industrial adhesive application operations is the facility using the cleaning materials during these operations. This recommendation is consistent with measures required by State and local jurisdictions for reducing VOC emissions from cleaning materials used in miscellaneous industrial adhesives application operations.

We cannot, however, issue a rule requiring such work practices for miscellaneous industrial adhesive application facilities because, pursuant to CAA section 183(e)(1)(C) and (e)(3)(B), the regulated entities subject to

a national rule would be the cleaning materials manufacturers and suppliers and not the miscellaneous industrial adhesive application facilities. By contrast, a CTG can address these application facilities. Accordingly, we are including in the draft CTG these work practices that apply to miscellaneous industrial adhesive application facilities as the end users of the cleaning materials.

Based on the nature of the miscellaneous industrial adhesive application process, the sources of significant VOC emissions from this process, and the available strategies for reducing such emissions, the most effective means of achieving VOC emission reductions from this product category is through control at the point of use of the product, (*i.e.*, through controls on miscellaneous industrial adhesive application facilities). This strategy can be accomplished only through a CTG. The recommended approaches described in the draft CTG are also consistent with effective existing State and local VOC control strategies for other 183(e) product categories. These two factors alone demonstrate that a CTG will be substantially as effective as a national regulation under CAA section 183(e) in addressing VOC emissions from miscellaneous industrial adhesives and associated cleaning materials in ozone nonattainment areas.

2. The Product's Distribution and Place of Use and Likely VOC Emission Reductions Associated With a CTG Versus a Regulation

The factors described in the above section, taken by themselves, weigh heavily in favor of the CTG approach. The other two factors relevant to the CAA section 183(e)(3)(C) determination only further confirm that a CTG will be substantially as effective as a national regulation for miscellaneous industrial adhesives and associated cleaning materials.

First, miscellaneous industrial adhesives and associated cleaning materials are used at manufacturing facilities in specific, identifiable locations. Specifically, these materials are used in industrial manufacturing facilities that apply adhesives to various materials, as described in section V.A. This stands in contrast to other consumer products, such as architectural coatings, which are widely distributed and used by innumerable small users (*e.g.*, individual consumers in the general public). Because the VOC emissions are occurring at industrial manufacturing facilities, implementation and enforcement of controls concerning the use of these products are feasible. Therefore the nature of the products' place of use further counsels in favor of the CTG approach.

Second, a CTG will achieve greater emission reduction than a national rule for VOC emissions from miscellaneous industrial adhesives and associated cleaning materials. For the reasons described above, we believe that a national rule limiting the VOC content in adhesives and cleaning materials used in miscellaneous industrial adhesive application operations would result in little VOC emissions reduction. By contrast, a CTG can achieve significant VOC emissions reduction because it can provide for the highly effective emission control strategies that are applicable to the end-users of the adhesives and cleaning materials at miscellaneous industrial adhesive application facilities. As described above, our recommendations in the draft CTG include the use of control devices, specific application methods, and work practices. The significant VOC reductions associated with these measures could not be obtained through a national regulation, because they are achieved through the implementation of measures by the end-user. In addition, and as previously explained, strategies that arguably could be implemented through rulemaking, such as limiting the VOC content in adhesives and cleaning materials, are far more effective if implemented directly through a CTG at the point of product use. For the reasons stated above, it is more effective to control the VOC emissions from adhesives and cleaning materials used for miscellaneous industrial adhesive application through a CTG than through a national regulation.

Furthermore, the number of miscellaneous industrial adhesives application facilities affected by our recommendations in this draft CTG, as compared to the total number of such facilities in ozone nonattainment areas, does not affect our conclusion that the CTG would be substantially more effective than a rule in controlling VOC emissions for these product categories. We recommend the control measures described in the draft CTG for miscellaneous industrial adhesive application facilities that emit 6.8 kg/day (15 lb/day) or more VOC. Based on the April 2004 ozone nonattainment designations, we estimate that 180 of the 720 miscellaneous industrial adhesive application facilities located in ozone nonattainment areas emit 6.8 kg/day (15 lb/day) or more and are therefore addressed by our recommendations in the draft CTG. We estimate that 540 miscellaneous industrial application facilities would not be covered by the recommendations in the draft CTG. However, according to the 2002 NEI database, these 540 facilities collectively emitted about 239 Mg/yr (264 tpy) of VOC, which is less than 6 percent of the total reported VOC (an average of about 0.44 Mg/yr (0.49 tpy) per facility) in ozone nonattainment areas. The fact that the CTG addresses more than 94 percent of the VOC emissions from miscellaneous industrial adhesive application facilities in ozone nonattainment areas further supports our conclusion that a CTG is more likely to achieve the intended VOC emission reduction goal for these product categories than a national rule.

Upon considering the above factors in light of the facts and circumstances associated with this product category, we propose to determine that a CTG for miscellaneous industrial adhesive application facilities will be substantially as effective as a national regulation.

VI. Statutory and Executive Order (EO) Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under EO 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action,'' since it is deemed to raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

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.*). Burden is defined at 5 CFR 1320.3(b). This action does not contain any information collection requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small

entity is 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 owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed action will not impose any requirements on small entities. We are proposing to take final action to list the five Group IV consumer and commercial product categories addressed in this notice for purposes of CAA section 183(e) of the CAA. This listing action alone does not impose any regulatory requirements. We are also proposing to determine that, for the five product categories at issue, a CTG will be substantially as effective as a national regulation in achieving VOC emission reductions in ozone nonattainment areas. This proposed determination means EPA has concluded that it is appropriate to issue guidance in the form of CTGs that provide recommendations to States concerning potential methods to achieve needed VOC emission reductions from these product categories. In addition to this proposed determination, we are also taking comment on the draft CTGs for these five product categories. When finalized, these CTGs will be guidance documents. EPA does not directly regulate any small entities through the issuance of a CTG. Instead, EPA issues CTGs to provide States with guidance on developing appropriate regulations to obtain VOC emission reductions from the affected sources within certain nonattainment areas. EPA's issuance of a CTG does trigger an obligation on the part of certain States to issue State regulations, but States are not obligated to issue regulations identical to the EPA's CTG. States may follow the guidance in the CTG or deviate from it, and the ultimate determination of whether a State regulation meets the RACT requirements of the CAA would be determined through notice and comment rulemaking in the EPA's action on each State's State Implementation Plan. Thus, States retain discretion in determining to what degree to follow the CTGs.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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 to 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.

This 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 because the rule imposes no enforceable duty on any State, local or tribal governments or the private sector. (**Note:** The term ''enforceable duty'' does not include duties and conditions in voluntary Federal contracts for goods and services.) Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because they contain no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, this action is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

Executive Order (EO) 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 EO 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 proposed 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 EO 13132. The CAA establishes the relationship between the Federal Government and the States, and this action does not impact that relationship. Thus, EO 13132 does not apply to this rule. In the spirit of EO 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order (EO) 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' This proposed rule does not have Tribal implications, as specified in EO 13175. This listing action and proposed determination do not have a substantial direct effect on one or more Indian Tribes, in that it imposes no regulatory burden on tribes. Furthermore, it does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the Tribal Authority Rule (TAR) establish the relationship of the Federal government and Tribes in

implementing the Clean Air Act. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an envioronmental standards intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Action 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. These actions impose no regulatory requirements and are therefore not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

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) directs EPA to use voluntary consensus standards in their 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, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when the Agency does not use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering 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 (February 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

The purpose of section 183(e) is to obtain VOC emission reductions to assist in the attainment of the ozone NAAQS. The health and environmental risks associated with ozone were considered in the establishment of the ozone NAAQS. The level is designed to be protective of the public with an adequate margin of safety. EPA's listing of the products and its determination that CTGs are substantially as effective as regulations are actions intended to help States achieve the NAAQS in the most appropriate fashion. Accordingly, these actions would help increase the level of environmental protection to populations in affected ozone nonattainment areas without having any disproportionately high and adverse human health or environmental effects on any populations, including any minority or low-income populations.

List of Subjects in 40 CFR Part 59

Air pollution control, Consumer and commercial products, Confidential business information, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 3, 2008.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 59—[AMENDED]

1. The authority citation for part 59 continues to read as follows:

Authority: 42 U.S.C. 7414 and 7511b(e).

Subpart A—General

2. Section 59.1 is revised to read as follows:

§ 59.1 Final Determinations Under Section 183(e)(3)(C) of the Clean Air Act.

This section identifies the consumer and commercial product categories for which EPA has determined that control techniques guidelines will be substantially as effective as regulations in reducing volatile organic compound emissions in ozone nonattainment areas:

(a) Wood furniture coatings;
(b) Aerospace coatings;
(c) Shipbuilding and repair coatings;
(d) Lithographic printing materials;
(e) Letterpress printing materials;
(f) Flexible packaging printing materials;
(g) Flat wood paneling coatings;
(h) Industrial cleaning solvents;
(i) Paper, film, and foil coatings;
(j) Metal furniture coatings;
(k) Large appliance coatings;
(l) Miscellaneous metal products coatings;
(m) Plastic parts coatings;
(n) Auto and light-duty truck assembly coatings;
(o) Fiberglass boat manufacturing materials; and
(p) Miscellaneous industrial adhesives.

[FR Doc. E8–15722 Filed 7–11–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–8691–3]

Minnesota: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Minnesota has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Minnesota has submitted these changes so that it may implement the EPA-approved Joint Powers Agreement (JPA) with Hennepin County, Minnesota. EPA has reviewed Minnesota's application and has preliminarily determined that these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize the State's changes through this proposed final action.

DATES: Written comments must be received on or before August 13, 2008.

Effective Dates and Duration: This approval will become effective when the final **Federal Register** notice is published. This approval will expire automatically if the JPA between the State of Minnesota and Hennepin

County is terminated or expires without renewal.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–RCRA–2008–0468, by one of the following methods:

http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: westefer.gary@epa.gov.

Mail: Gary Westefer, Minnesota Regulatory Specialist, LR–8J, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Instructions: Direct your comments to Docket ID Number EPA–R05–RCRA–2008–0468. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epagov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some of the information is not publicly available, *e.g.*, CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy. You can view and copy Minnesota's application from 9 a.m. to 4 p.m. at the following addresses: Minnesota Pollution Control Agency, 520 Lafayette Road, North, St. Paul, Minnesota 55155, contact Tanya Maurice, (651) 297–1793; and U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, contact Gary Westefer, Minnesota Regulatory Specialist, LR–8J, (312) 886–7450.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Minnesota Regulatory Specialist, U.S. EPA Region 5, LR–8J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450, e-mail *westefer.gary@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA Section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Minnesota's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Minnesota final authorization to operate its hazardous waste program with the changes described in the authorization application. Minnesota has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Minnesota, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of the Proposed Authorization Decision?

The effect of this decision is to allow Minnesota to implement the EPA approved JPA with Hennepin County. Hennepin County will be able to conduct an agreed number of inspections, within Hennepin County, annually on behalf of the Minnesota Pollution Control Agency (MPCA). The JPA does not affect MPCA's enforcement responsibility.

Minnesota continues to have enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, require monitoring, tests, analyses, or reports, and
- Enforce RCRA requirements and suspend or revoke permits.

This action does not impose additional requirements on the regulated community because there are no new regulations or inspection requirements created by this action. Metro County authorities, including Hennepin County, are already performing inspections at RCRA facilities.

D. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will address such comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you must do it at this time.

E. What Has Minnesota Previously Been Authorized for?

Minnesota initially received final authorization on January 28, 1985, effective February 11, 1985 (50 FR 3756) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 20, 1987, effective September 18, 1987 (52 FR 27199); on April 24, 1989, effective June 23, 1989 (54 FR 16361) amended June 28, 1989 (54 FR 27170); on June 15, 1990, effective August 14, 1990 (55 FR 24232); on June 24, 1991, effective August 23, 1991 (56 FR 28709); on March 19, 1992, effective May 18, 1992 (57 FR 9501); on March 17, 1993, effective May 17, 1993 (58 FR 14321); on January 20, 1994,

effective March 21, 1994 (59 FR 2998); and on May 25, 2000, effective August 23, 2000 (65 FR 33774). Minnesota also received authorization for the U.S. Filter Recovery Services Project XL on May 22, 2001, effective May 22, 2001 (66 FR 28085).

F. What Changes Are We Authorizing With Today's Action?

On February 25, 2008, Minnesota submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We have determined, subject to receipt of written comments that oppose this action, that Minnesota's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we propose to grant Minnesota final authorization for the following program changes:

Description of state initiated change (include checklist #, if relevant)	**Federal Register** date and page and/or RCRA statutory authority)	State authority
Joint Powers Agreement between the Minnesota Pollution Control Agency and Hennepin County.	42 U.S.C. 6926 and 6929, 40 CFR 271.16 and 271.17.	Minnesota Statutes sections 13.02, effective 1974 as amended; 13.39, effective 1981 as amended; 115.071, effective 1973 as amended; 115.072, effective 1973 as amended; 116.07, effective 1967 as amended; 116.075, effective 1971 as amended; 471.59, effective 1943 as amended; 473.151, effective 1976 as amended; 473.811, effective 1975 as amended.

Sections 13.02 and 13.39 of the Minnesota Statutes cover data practices. Section 13.02 includes political subdivisions such as counties as well as the State agencies. Section 13.39 provides for public access to all data except that legally classified as nonpublic. Section 115.071 provides for adequate enforcement tools including civil and criminal penalties meeting the requirements of 40 CFR 271.16. Section 115.072 allows the State agency to seek recovery of its litigation costs. Section 116.07 authorizes MPCA to adopt hazardous waste rules. Section 116.072 authorizes the issuance of Administrative Penalty Orders meeting the requirements of 40 CFR 271.16. Section 116.075 governs treatment of trade secret data as does Section 473.151, which also authorizes sharing of this information to comply with Federal law as required in 40 CFR 271.17(a). Section 471.59 provides the legal basis for governmental units such as MPCA and Hennepin County to enter into a cooperative agreement. Section 473.811 provides the seven Metro Counties (including Hennepin) authority to inspect waste facilities for enforcement purposes.

G. Where Are the Revised State Rules Different From the Federal Rules?

In the changes currently being made to Minnesota's program, there are no revisions of State regulations.

H. Who Handles Permits After the Authorization Takes Effect?

Minnesota will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to implement and issue permits for HSWA requirements for which Minnesota is not yet authorized. EPA or Minnesota may enforce compliance with those permits. There are no new permits, or alterations to existing permits created by the JPA.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Minnesota?

Minnesota is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian Reservations within or abutting the State of Minnesota, including:

a. Bois Forte Indian Reservation.
b. Fond Du Lac Indian Reservation.
c. Grand Portage Indian Reservation.
d. Leech Lake Indian Reservation.
e. Lower Sioux Indian Reservation.
f. Mille Lacs Indian Reservation.
g. Prairie Island Indian Reservation.
h. Red Lake Indian Reservation.
i. Shakopee Mdewankanton Indian Reservation.
j. Upper Sioux Indian Reservation.
k. White Earth Indian Reservation.

2. Any land held in trust by the U.S. for an Indian tribe, and

3. Any other land, whether on or off a reservation that qualifies as Indian country.

Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

J. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes 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 action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. 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) because it is not a significant regulatory action under Executive Order 12866. This action does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law

for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. 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.*).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 13, 2008.

Walter W. Kovalick,

Acting Regional Administrator, Region 5.

[FR Doc. E8–16022 Filed 7–11–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7794]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before October 14, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7794, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Pinellas County, Florida, and Incorporated Areas				
Channel 1	Approximately 160 feet downstream of 90th Avenue N.	+12	+11	City of Pinellas Park, Unincorporated Areas of Pinellas County.
	Approximately 1,980 feet upstream of 102nd Avenue N.	None	+14	
Channel 2	Approximately 290 feet upstream of Gandy Boulevard	None	+10	City of Pinellas Park.
	Just downstream of Highway 19	None	+12	
Channel 3	At 68th Avenue N	+9	+10	Unincorporated Areas of Pinellas County, City of Pinellas Park.
	Just downstream of 49th Street N	None	+17	
Joe's Creek Tributary 4 (Channel 4).	Approximately 2,400 feet upstream of the confluence with Joe's Creek.	+11	+12	City of Pinellas Park, Unincorporated Areas of Pinellas County.
	Approximately 1,000 feet upstream of 62nd Street N	None	+28	
Lake Parcel	Flooding area bound by 96th Terrace N to the north, 34th Way N to the west, Gateway Boulevard to the south, and MCI Drive to the east.	+10	+9	City of Pinellas Park.
	Flooding area bound by 97th Avenue N to the north, 37th Street N to the west, 93rd Avenue N to the south, and Mainlands Boulevard E to the east.	+12	+10	
Lake Tamarac	Flooding area bound by Mainlands Boulevard N to the north, Mainlands Boulevard W to the west, 96th Terrace Lane N to the south, and 41st Street N to the east.	+12	+11	City of Pinellas Park.
Ponding Area	Ponding area bound by 102nd Avenue N to the north, 64th Street N to the west, 98th Avenue N to the south, and 62nd Street N to the east.	+13	+14	City of Pinellas Park.
	Ponding area bound by 99 Circle N to the north, 66th Street N to the west, 94th Avenue N to the south, and 61st Way N to the east.	None	+13	
	Ponding area bound by 94th Avenue N to the north, 66th Street N to the west, 90th Avenue N to the south, and 62nd Street N to the east.	None	+13	
	Ponding area bound by CSX Railroad to the north, 63rd Way N to the west, 82nd Avenue N to the south, and CSX Railroad to the east.	None	+12	
	Ponding area bound by 86th Avenue N to the north, CSX Railroad to the west, 82nd Avenue N to the south, and 62nd Street N to the east.	None	+11	
	Ponding area bound by 82nd Avenue N to the north, 63rd Street N to the west, 80th Avenue N to the south, and 61st Lane N to the east.	None	+13	
	Ponding area bound by 80th Avenue N to the north, 62nd Street N to the west, 78th Avenue N to the south, and 60th Street N to the east.	None	+12	
	Ponding area bound by 102nd Avenue N to the north, Highway 19 to the west, Highway 19 to the south, and 45th Way N to the east.	+13	+12	
	Ponding area bound by Mainlands Boulevard N to the north, 41st Street N to the west, 96th Terrace N to the south, and 40th Street N to the east.	+12	+11	
	Ponding area bound by Mainlands Boulevard W to the north, Highway 19 to the west, Gateway Boulevard to the south, and 40th Street N to the east.	None	+11	
	Ponding area bound by 86th Avenue N to the north, 44th Street N to the west, 78th Avenue N to the south, and Highway 19 to the east.	+13	+14	
	Ponding area bound by Highway 19 to the north, 46th Street N to the west, 85th Terrace N to the south, and Highway 19 to the east.	+13	+11	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Ponding area bound by 94th Avenue N to the north, 49th Street N to the west, 86th Avenue N to the south, and Highway 19 to the east.	+13	+12	
	Ponding area bound by 94th Avenue N to the north, 49th Street N to the west, 90th Avenue N to the south, and Highway 19 to the east.	+13	+12	
	Ponding area bound by 82nd Avenue N to the north, 52nd Street N to the west, 78th Avenue N to the south, and 47th Street N to the east.	+15	+14	
	Ponding area bound by 87th Terrace N to the north, 53rd Way N to the west, 82nd Terrace N to the south, and 52nd Way N to the east.	+15	+11	
	Ponding area bound by 86th Avenue N to the north, 60th Street N to the west, 78th Avenue N to the south, and 52nd Street N to the east.	+15	+13	
	Ponding area bound by 70th Avenue N to the north, 65th Street N to the west, 67th Avenue N to the south, and 63rd Way N to the east.	None	+15	
	Ponding area bound by 80th Avenue N to the north, 47th Street N to the west, Park Boulevard N to the south, and 40th Street N to the east.	None	+15	
	Ponding area bound by Park Boulevard N to the north, CSX Railroad to the west, 68th Avenue N to the south, and 41st Street N to the east.	+18	+16	
	Ponding area bound by 76th Avenue N, 56th Street N to the west, 71st Avenue N to the south, and 52nd Street N to the east.	None	+15	
	Ponding area bound by 68th Avenue N to the north, 51st Way N to the west, 65th Avenue N to the south, and 49th Way N to the east.	None	+15	
	Ponding area bound by 66th Avenue N to the north, 47th Street N to the west, 58th Avenue N to the south, and 35th Street N to the east.	+18	+27	
	Ponding area bound by Gateway Center Parkway to the north, 34th Street N to the west, Grand Avenue to the south, and 28th Street N to the east.	+9	+10	
	Ponding area bound by Gateway Boulevard to the north, 37th Street to the west, Grand Avenue to the south, and Gateway Center Parkway to the east.	None	+10	
	Ponding area bound by Mainlands Boulevard N to the north, 40th Street N to the west, 99th Terrace N to the south, and 38th Way N to the east.	+12	+11	
	Ponding area bound by 103rd Avenue N to the north, 39th Street N to the west, 101st Avenue N to the south, and 36th Court to the east.	+12	+10	
	Ponding area bound by 99th Place N to the north, Mainlands Boulevard E to the west, 98th Terrace N to the south, and 34th Way N to the east.	+11	+10	
Ponding Area	Ponding area bound by 62nd Avenue N to the north, 66th Street N to the west, 54th Avenue N to the south, and 54th Street N to the east.	None	+14	Unincorporated Areas of Pinellas County.
	Ponding area bound by 54th Avenue N to the north, 69th Way N to the west, 49th Avenue N to the south, and 68th Way N to the east.	None	+15	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Pinellas Park

Maps are available for inspection at Pinellas Park City Hall, 5141 78th Avenue, Pinellas Park, FL 33781.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Unincorporated Areas of Pinellas County				
Maps are available for inspection at Pinellas County Development Review, 310 Court Street, Clearwater, FL 33756.				
Oconee County, Georgia, and Incorporated Areas				
Calls Creek	Approximately 3,100 feet downstream of U.S. Highway 441/State Highway 15.	None	+612	Unincorporated Areas of Oconee County, City of Watkinsville.
	At U.S. Highway 441/U.S. Highway 129 Bypasses/State Highway 24/186.	None	+669	
Lampkin Branch	At confluence with Calls Creek	None	+637	City of Watkinsville.
	Approximately 1,280 feet upstream of confluence with Calls Creek.	None	+642	
Porters Creek	At confluence with Oconee River	+526	+527	Unincorporated Areas of Oconee County.
	Approximately 550 feet upstream of confluence with Oconee River.	+526	+527	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Watkinsville

Maps are available for inspection at City Hall, 191 VFW Drive, Watkinsville, GA 30677.

Unincorporated Areas of Oconee County

Maps are available for inspection at Oconee County Planning Department, 22 North Main Street, Watkinsville, GA 30677.

Union County, Kentucky, and Incorporated Areas				
Ohio River	At confluence with Tradewater River (At Union County / Crittenden County boundary).	None	+362	Town of Uniontown, Unincorporated Areas of Union County.
	Approximately at 9.9 Miles upstream of confluence with Higland Creek (At Union County / Henderson County).	None	+371	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Uniontown

Maps are available for inspection at Third and Main Streets, Uniontown, KY 42461.

Unincorporated Areas of Union County

Maps are available for inspection at 100 West Main Street, Morganfield, KY 42437.

Wayne County, Kentucky, and Incorporated Areas				
Lake Cumberland	At Wolfe Creek Dam	None	+760	City of Monticello, Unincorporated Areas of Wayne County.
	Approximately at 7600 feet upstream Dugger Branch (North eastern county boundary).	None	+760	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Monticello

Maps are available for inspection at 157 South Main Street, Monticello, KY 42633.

Unincorporated Areas of Wayne County

Maps are available for inspection at 109 N. Main St., Monticello, KY 42633.

Caldwell County, North Carolina, and Incorporated Areas

Hayes Mill Creek	Approximately 1,500 feet upstream of the confluence with Catawba River.	None	+1003	Unincorporated Areas of Caldwell County, Town of Granite Falls, Town of Sawmills.
	Approximately 700 feet upstream of the confluence of Hayes Mill Creek Tributary 2.	None	+1120	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Granite Falls

Maps are available for inspection at Granite Falls Town Hall, 30 Park Square, Granite Falls, NC.

Town of Sawmills

Maps are available for inspection at Sawmills Town Hall, 4076 U.S. Highway 321A, Sawmills, NC.

Unincorporated Areas of Caldwell County

Maps are available for inspection at Caldwell County Courthouse, 1051 Harper Avenue, Lenoir, NC.

Wayne County, Ohio, and Incorporated Areas

Killbuck Ditch (backwater from Killbuck Creek).	Downstream of railroad crossing at Burbank Road	None	+967	Unincorporated Areas of Wayne County, Village of Creston.
	Confluence with Killbuck Creek	None	+967	
Unnamed Tributary (Backwater from Killbuck Creek).	Confluence with Killbuck Creek	None	+976	Unincorporated Areas of Wayne County, Village of Creston.
	Upstream of S. Main Street in Village of Creston	None	+976	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Wayne County

Maps are available for inspection at 428 West Liberty Street, Wooster, OH 44691.

Village of Creston

Maps are available for inspection at 100 N Main Street, Creston, OH 44217.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 8, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–15982 Filed 7–11–08; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 27, 74, 78, and 101

[WT Docket No. 07–195; WT Docket No. 04–356; DA 08–1614]

Service Rules for Advanced Wireless Services in the 1915–1920 MHz, 1995–2000 MHz, 2155–2175 MHz, and 2175–2180 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In this document, the Commission announces an extension of the dates for filing supplemental comments and reply comments in response to the rules proposed in the *Further Notice of Proposed Rulemaking (FNPRM)* that was adopted by the Commission on June 20, 2008.

DATES: Comments must be filed on or before July 25, 2008, and reply comments must be filed on or before August 11, 2008.

ADDRESSES: You may submit comments, identified by WT Docket Nos. 04–356 and 07–195, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail: FCC504@fcc.gov* or *phone:* 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Peter Daronco, Esq., or Paul Malmud, Esq., at 202–418–2486.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, released July 8, 2008. The complete text of this document, and related Commission documents, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of the *Order* and related Commission documents may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site *http://www.BCPIWEB.com*. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, FCC 07–38. The *Order* is also available on the Commission's Web site: *http://www.wireless.fcc.gov/index.htm?job=headlines*.

- Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).
- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of Order

1. This Order grants in part a request to modify the deadlines for filing supplemental comments and reply comments in response to the *FNPRM* that was published at 73 FR 35995, June 25, 2008. Comments are now due on July 25, 2008, and reply comments are due on August 11, 2008.

2. On July 1, 2008, T-Mobile USA, Inc. (T-Mobile) filed a request (*Request*) to modify the pleading schedule for the *FNPRM*. T-Mobile argues that the comment deadline should be extended by 90 days, to October 7, 2008, in order for the Commission to institute supervised testing to determine the extent of interference concerns raised by the proposal in the *FNPRM*. In the alternative, T-Mobile requests that the Commission extend the comment deadline by at least 30 days in order to allow T-Mobile to have sufficient time to submit a comprehensive analysis of its own ongoing tests into the record. In support of its extension request, T-Mobile avers that the abbreviated

comment cycle provides insufficient time to assess complex technical issues to address fully—using empirical data—the possible interference concerns raised by allowing TDD transmissions in the AWS–3 band. T-Mobile asserts that the Commission must allow additional time to develop a proper record on this issue through empirical testing and that it would be ''arbitrary and capricious'' to do otherwise. It claims that the comment period is shorter than what is typically recognized to allow informed comment and asserts that the minimum appropriate comment window is 30 days. While T-Mobile requests at least an additional 30 days to ''allow interested parties to conduct their own testing, submit data, and evaluate the test results of other parties,'' it prefers that the Commission extend the comment deadline by 90 days and conduct independent testing on potential interference issues.

3. AT&T, United States Cellular, Ericsson and Sony Ericsson, Motorola, PCIA, and Nokia filed comments in support of T-Mobile's request for an extension of the comment period, contending that additional time to provide comments would permit the inclusion in the record of technical analyses that will allow the public and the Commission to better evaluate the interference issues posed by the proposed rules.[1] The Rural Telecommunications Group, Inc., and the National Telecommunications Cooperative Association (collectively the ''Rural Advocates''), aver that additional time is necessary to allow small and rural companies adequate opportunity to assess the impact of the Commission's proposal on the deployment of broadband wireless services in rural areas. M2Z Networks, Inc. (M2Z) filed an opposition to T-Mobile's request for an extension of the comment period, asserting that the Commission already has an extensive record on interference issues in the above-captioned proceeding.

4. Under section 1.46(a) of the Commission's rules, it is the policy of the Commission that extensions of time shall not be routinely granted.[2] Nevertheless, in this instance, we find that providing additional time for filing comments will serve the public interest by ensuring the development of a more complete and well-developed record in response to the *FNPRM.* We note that parties have had notice of the possibility that TDD operations would be permitted in the AWS–3 band since at least the issuance of the *AWS–3 Notice of Proposed Rulemaking* in WT Docket No. 07–195 (*AWS–3 NPRM*) nearly one year ago—and nothing proposed in the *FNPRM* alters that basic proposal. We also note that interested parties have already been in the process of commenting and engaging in a meaningful dialogue about these issues in comments filed in response to the *AWS–3 NPRM.* However, we believe that providing a limited extension equaling 30 days from **Federal Register** publication of the *FNPRM*[3] to allow for additional discussion of the proposal in the *FNPRM* will not unreasonably delay the Commission's adoption of final rules in this proceeding. Accordingly, we grant the *Request* in part by extending the deadline for all comments to July 25, 2008. In order to provide parties an additional amount of time in which to review and respond to the comments received, we also extend the reply deadline to 15 days from the revised comment deadline, to August 11, 2008.[4] We also note that, with the issuance of the *FNPRM,* adoption of final rules in this proceeding would not have occurred in July, 2008.

5. Pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 154(j), and sections 0.131, 0.331, and 1.46 of the Commission's rules, 47 CFR 0.131, 0.331, and 1.46, the deadline for filing comments and reply comments in response to the *FNPRM* is extended to July 25, 2008, and until August 11, 2008, respectively.

6. Pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 154(j), and sections 0.131, 0.331, and 1.46 of the Commission's rules, 47 CFR 0.131, 0.331, and 1.46, the T-Mobile Request for Extension of Time to File Comments is granted to the extent indicated herein and otherwise denied.

Federal Communications Commission.

James D. Schlichting,

Acting Chief, Wireless Telecommunications Bureau.

[FR Doc. E8–16032 Filed 7–11–08; 8:45 am]

BILLING CODE 6712–01–P

[1] In a July 3 *ex parte* filing, CTIA also expressed its support for an extension of time.

[2] 47 CFR 1.46(a).

[3] The *FNPRM* was published in the **Federal Register** on June 25, 2008. *See* Service Rules for Advanced Wireless Services in the 1915–1920 MHz, 1995–2000 MHz, 2155–2175 MHz and 2175–2180 MHz Bands, 73 FR 35995, June 25, 2008.

[4] Because 15 days from the revised comment deadline of July 25 falls on Saturday, August 9, reply comments are due on Monday, August 11, 2008. We note that nothing in today's Order precludes the filing of comments—on some or all issues—prior to the revised deadline date.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1501; MB Docket No. 08–102; RM–11439]

Television Broadcasting Services; South Bend, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by LeSEA Broadcasting, Inc. (''LeSEA''), the licensee of WHME–DT, DTV channel 48, South Bend, Indiana. LeSEA requests the substitution of DTV channel 46 for channel 48 at South Bend.

DATES: Comments must be filed on or before August 13, 2008, and reply comments on or before August 28, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Joseph C. Chautin, III., Esq., Hardy, Carey, Chautin & Balkin, L.L.P., 1080 West Causeway Approach, Mandeville, LA 70471–3036.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *Joyce.Bernstein@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–102, adopted July 1, 2008, and released July 2, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202)

418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Indiana, is amended by substituting channel 46 for channel 48 at South Bend.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–15831 Filed 7–11–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1494; MB Docket No. 08–106; RM–11447]

Television Broadcasting Services; Castle Rock, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by LeSEA Broadcasting of Denver, Inc. (''LeSEA''), the licensee of KWHD–DT, DTV channel 46, Castle Rock, Colorado. LeSEA requests the substitution of DTV channel 45 for channel 46 at Castle Rock.

DATES: Comments must be filed on or before August 13, 2008, and reply comments on or before August 28, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Joseph C. Chautin, III., Esq., Hardy, Carey, Chautin & Balkin, L.L.P., 1080 West Causeway Approach, Mandeville, LA 70471–3036.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *Joyce.Bernstein@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–30, adopted July 1, 2008, and released July 2, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Colorado, is amended by substituting channel 45 for channel 46 at Castle Rock.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–15841 Filed 7–11–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1487; MB Docket No. 08–118; RM–11455]

Television Broadcasting Services; Shreveport, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Louisiana Educational Television Authority (''LETA''), the licensee of noncommercial educational station KLTS–DT, DTV channel *25, Shreveport, Louisiana. LETA requests the substitution of DTV channel *24 for channel *25 at Shreveport.

DATES: Comments must be filed on or before August 13, 2008, and reply comments on or before August 28, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Malcolm G. Stevenson, Esq., Schwartz, Woods & Miller, Suite 610, The Lion Building, 1233 20th Street, NW., Washington, DC 20036–7322.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *Joyce.Bernstein@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–118, adopted July 1, 2008, and released July 2, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Louisiana, is amended by substituting channel *24 for channel *25 at Shreveport.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–16014 Filed 7–11–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[DA 08–1530; WT Docket No. 02–55]

Public Safety and Homeland Security Bureau Seeks Comment on New 800 MHz Band Plan for Puerto Rico

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document summarizes the Second Further Notice of Proposed Rulemaking (Second FNPRM), which seeks comment on post-reconfiguration 800 MHz band plans for the Puerto Rico region. The Bureau, by this action, affords interested parties an opportunity to submit comments and reply comments on proposals for establishing a reconfigured 800 MHz band plan in the Puerto Rico region in order to accomplish the Commission's goals for band reconfiguration.

DATES: Comments are due on or before August 8, 2008 and reply comments are due on or before August 22, 2008.

ADDRESSES: You may submit comments, identified by WT Docket 02–55, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Policy Division, Public Safety and Homeland Security Bureau, 445 12th Street, SW., Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: John Evanoff, Policy Division, Public Safety and Homeland Security Bureau, (202) 418–0848.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rulemaking, DA 08–1530, released on June 30, 2008. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com*. It is also available on the Commission's Web site at *http://www.fcc.gov.*

1. In a July 2004 Report and Order, the Commission reconfigured the 800 MHz band to eliminate interference to public safety and other land mobile communication systems operating in the band, 69 FR 67823 (November 22, 2004). In a Second Memorandum Opinion and Order, adopted in May 2007, the Commission determined that an alternative band plan was appropriate for Puerto Rico due to the unique nature of 800 MHz incumbency in the Puerto Rico market compared to other markets 72 FR 39756 (July 20, 2007). Rather than specify a band plan for Puerto Rico, the Commission directed the 800 MHz Transition Administrator (TA) to propose an alternative band plan and negotiation timetable for Puerto Rico. The Commission stated that the TA's proposal should comply with certain

criteria. The Commission delegated authority to the Public Safety and Homeland Security Bureau to approve or modify the proposed band plan and timetable, and suspended the rebanding timetable for Puerto Rico until a new band plan is adopted. On October 19, 2007, the TA filed the requested band plan proposal in this docket (TA Proposal).

2. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates listed on the first page of this summary. All filings related to the Further Notice of Proposed Rulemaking should refer to WT Docket No. 02–55. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998).

Procedural Matters

A. Initial Regulatory Flexibility Analysis

3. Pursuant to the Regulatory Flexibility Act (RFA), the Bureau has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the proposals considered in the Second FNPRM. The text of the IRFA is set forth in Appendix A. Written public comments are requested on this IRFA. Comments must be filed in accordance with the same filing deadlines for comments on the Second FNPRM, and they should have a separate and distinct heading designating them as responses to the IRFA. The Bureau will send a copy of the Second FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

B. Initial Paperwork Reduction Act of 1995 Analysis

4. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Initial Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Second Further Notice of Proposed Rulemaking (Second FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the first page of the Second FNPRM. The Commission will send a copy of the Second FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Second FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

6. In the Second Further Notice of Proposed Rulemaking (Second FNPRM), we consider the 800 MHz Transition Administrator's (TA) proposal to reconfigure the band plan for Puerto Rico. Consistent with the U.S. Band Plan, all Puerto Rico incumbents in the 806–809/851–854 MHz (Channel 1–120) band segment would be relocated to comparable spectrum in the Interleaved, Expansion, or ESMR Band, depending on their eligibility. All NPSPAC licensees would be relocated from their 821–824/866–869 MHz channel assignments to channel assignments 15 MHz downward in the 806–809/851–854 MHz band segment. Under the TA Proposal, the Puerto Rico band plan would be the same as the band plan for non-border regions of the United States (US Band Plan), except that the Expansion Band would be expanded by 0.5 MHz in bandwidth through elimination of the lower 0.5 MHz portion of the Guard Band. Under the TA Proposal, the ESMR Band in EA 174 would remain in the same channels as in the U.S. Band Plan. The TA has determined that there will not be sufficient capacity to accommodate fully all ESMR and ESMR-eligible licensees in the ESMR Band. The TA Proposal provides that the TA will apportion the Puerto Rico ESMR Band (817–824/862–869 MHz) in accordance with the provisions set forth by the Commission the *800 MHz Second Memorandum Opinion and Order.* The TA proposes that all Puerto Rico licensees would be subject to a single 90-day mandatory negotiation period, after which any licensee that fails to negotiate a Frequency Reconfiguration Agreement with Sprint Nextel would enter TA-sponsored mediation. The reconfiguration of the 800 MHz band in the Puerto Rico is in the public interest because it will allow the Commission to eliminate interference in these regions to public safety and other land mobile communication systems. Interference is eliminated by separating—to the greatest extent possible—public safety and other non-cellular licensees from licensees that employ cellular technology in the 800 MHz band. In that connection, it is our intent to proceed with rebanding in Puerto Rico as quickly as is feasible consistent with the Commission's goals in this proceeding.

B. Legal Basis

7. The legal basis for any action that may be taken pursuant to this Notice is contained in Sections 4(i), 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f) and (r), and 332.

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

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

9. A small organization is generally any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Nationwide, as of 1992, there were approximately 275,801 small organizations. A ''small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number included 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that that 81,600 (ninety-one percent) are small entities. Below, we further describe and estimate the number of small entities—applicants

and licensees—that may be affected by the proposals, if adopted, in the Second FNPRM.

10. *Public Safety Radio Licensees.* Public safety licensees who operate 800 MHz systems in the Puerto Rico region would be required to relocate their station facilities according to the band plan proposed in the Second FNPRM. As indicated above, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.

11. *Business, I/LT, and SMR licensees.* Business and Industrial Land Transportation (B/ILT) and Special Mobile Radio (SMR) licensees who operate 800 MHz systems in the Puerto Rico region would be required to relocate their station facilities according to the band plans proposed in the Second FNPRM. Neither the Commission nor the SBA has developed a definition of small businesses directed specifically toward these licensees.

12. *ESMR Licensees.* Enhanced Specialized Mobile Radio (ESMR) licensees and ESMR-eligible licensees who operate 800 MHz systems in the Puerto Rico region would be required to relocate their station facilities according to the band plans proposed in the Second FNPRM. Neither the Commission nor the SBA has developed a definition of small businesses directed specifically toward these licensees.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

13. The Second FNPRM does not propose a rule that will entail additional reporting, recordkeeping, and/or third-party consultation or other compliance efforts.

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

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

15. The Puerto Rico market presents a unique situation that is distinct from other markets. Sprint holds considerably less spectrum in Puerto Rico than it does elsewhere, and there are several other licensees who have acquired significant EA license holdings in Puerto Rico at auction and seek to operate as ESMRs. In addition, Puerto Rico has numerous site-based incumbents that will need to be relocated to the non-ESMR block. Thus, an alternative band plan is appropriate here. Accordingly the Commission provided the 800 MHz Transition Administrator (TA) with specific criteria and directed the TA to propose an alternative band plan, including, if necessary, a pro rata distribution of ESMR spectrum. At the time the Commission adopted these criteria, it had no basis for anticipating that any future decision by the TA in either proposing an alternative band plan or proposing a pro rata distribution would adversely affect any small entities. The TA proposes to apportion the Puerto Rico Band Plan consistent with these criteria.

16. To the extent that adoption of the TA's Puerto Rico Band Plan may impose an economic impact in Puerto Rico on relocating non-ESMR and site-based incumbents, including public safety, to the non-ESMR band, that impact will be borne by Sprint because Sprint must pay the costs of 800 MHz band reconfiguration. Under Small Business Administration criteria, Sprint is a large entity. Further, there is no evidence in the record that non-Sprint licensees in the Puerto Rico market, including small wireless cellular, public safety, governmental entities or other wireless entities, would suffer adverse economic consequences. Indeed, these licensees are likely to enjoy several benefits, including improved interference protection as a result of band reconfiguration.

17. Additionally, while apportioning spectrum in the ESMR band may result in a reduction in ESMR spectrum availability, these reductions can be accommodated when a licensee employs more spectrum-efficient technologies and higher-quality digital technologies. ESMR and ESMR-eligible licensees are also likely to receive a number of benefits as a result of modifying the Puerto Rico Band Plan. For example, as a consequence of 800 MHz band reconfiguration ESMR-eligible licensees will be able to relocate EA and site-based facilities to the ESMR band that are currently located below the ESMR band. If these facilities are relocated and integrated into an ESMR band system, these licensees will be relieved of the cost and limitations associated with abating interference created by ESMR stations being interleaved with high-site systems used by public safety and others in the non-ESMR portion of the band, while taking advantage of spectrally efficient technologies.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

18. None.

Ordering Clauses

19. Accordingly, *it is ordered,* pursuant to sections 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 332, that the Second Further Notice of Proposed Rulemaking is adopted.

20. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the Second Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

21. *It is further ordered* that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before August 8, 2008, and reply comments on or before August 22, 2008.

Federal Communications Commission.

Derek K. Poarch,

Chief, Public Safety and Homeland Security Bureau.

[FR Doc. E8–16036 Filed 7–11–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA 2008–0112]

Preliminary Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of preliminary theft data; request for comments.

SUMMARY: This document requests comments on data about passenger motor vehicle thefts that occurred in calendar year (CY) 2006 including theft rates for existing passenger motor vehicle lines manufactured in model year (MY) 2006. The preliminary theft

data indicate that the vehicle theft rate for CY/MY 2006 vehicles (2.08 thefts per thousand vehicles) increased by 12.4 percent from the theft rate for CY/MY 2005 vehicles (1.85 thefts per thousand vehicles).

Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data, and publish the information for review and comment.

DATES: Comments must be submitted on or before September 12, 2008.

ADDRESSES: You may submit comments [identified by Docket No. NHTSA–2008–0112 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *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 or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

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://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541. The standard specifies performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

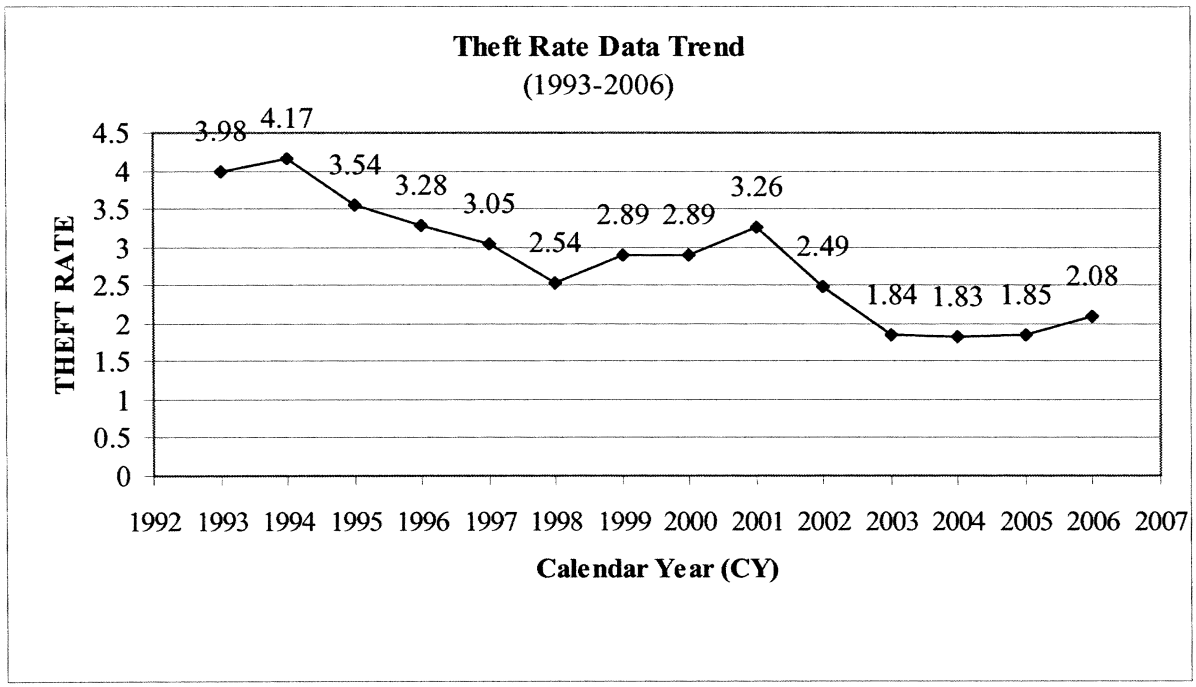
The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data, and publish the data for review and comment. To fulfill the § 33104(b)(4) mandate, this document reports the preliminary theft data for CY 2006, the most recent calendar year for which data are available.

In calculating the 2006 theft rates, NHTSA followed the same procedures it used in calculating the MY 2005 theft rates. (For 2005 theft data calculations, see 73 FR 13150, March 12, 2008). As in all previous reports, NHTSA's data were based on information provided to the agency by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a governmental system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources. The 2006 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 2006 vehicles of that line stolen during calendar year 2006, by the total number of vehicles in that line manufactured for MY 2006, as reported by manufacturers to the Environmental Protection Agency.

The preliminary 2006 theft data show an increase in the vehicle theft rate when compared to the theft rate experienced in CY/MY 2005. The preliminary theft rate for MY 2006 passenger vehicles stolen in calendar year 2006 increased to 2.08 thefts per thousand vehicles produced, an increase of 12.4 percent from the rate of 1.85 thefts per thousand vehicles experienced by MY 2005 vehicles in CY 2005. For MY 2006 vehicles, out of a total of 217 vehicle lines, 19 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991 (See 59 FR 12400, March 16, 1994). Of the 19 vehicle lines with a theft rate higher than 3.5826, 18 are passenger car lines, one is a multipurpose passenger vehicle line, and none are light-duty truck lines.

Although this publication reflects preliminary data which may change, the agency is aware that the data does reflect a possible second year with an increase in the overall theft rate (MY/CY 2005 & 2006). In the final notice for CY/MY 2005 the agency indicated that since there was only a slight elevation, the agency was not concerned but would monitor this to see if it was a beginning of a trend. If the final data for CY/MY 2006 does show a second year of increase, especially of the magnitude indicated by this preliminary data, the agency will explore what could be causing these elevations in the theft rate. The agency welcomes any comments on this possible new trend.

Figure 1: Theft Rate Data Trend (1993-2006)



Theft rate per thousand vehicles produced

In Table I, NHTSA has tentatively ranked each of the MY 2006 vehicle lines in descending order of theft rate. Public comment is sought on the accuracy of the data, including the data for the production volumes of individual vehicle lines.

Comments must not exceed 15 pages in length (49 CFR part 553.21). Attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to Dockets. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for this document will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on this document will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

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

Authority: 49 U.S.C. 33101, 33102 and 33104; delegation of authority at 49 CFR 1.50.

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2006 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2006

	Manufacturer	Make/model (line)	Thefts 2006	Production (mfr's) 2006	2006 Theft rate (per 1,000 vehicles produced)
1	DAIMLERCHRYSLER	DODGE MAGNUM	407	46501	8.7525
2	DAIMLERCHRYSLER	DODGE CHARGER	963	130892	7.3572
3	DAIMLERCHRYSLER	DODGE STRATUS	569	79998	7.1127
4	GENERAL MOTORS	PONTIAC GRAND PRIX	802	116458	6.8866
5	LAMBORGHINI	MURCIELAGO	1	159	6.2893

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2006 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2006—Continued

	Manufacturer	Make/model (line)	Thefts 2006	Production (mfr's) 2006	2006 Theft rate (per 1,000 vehicles produced)
6	GENERAL MOTORS	CHEVROLET MONTE CARLO	239	38136	6.2670
7	ROLLS ROYCE	PHANTOM	2	339	5.8997
8	DAIMLERCHRYSLER	CHRYSLER SEBRING	250	43115	5.7984
9	DAIMLERCHRYSLER	CHRYSLER SEBRING CONVERTIBLE	150	27685	5.4181
10	HONDA	ACURA RSX	69	15111	4.5662
11	DAIMLERCHRYSLER	CHRYSLER 300	991	217754	4.5510
12	GENERAL MOTORS	PONTIAC G6	716	170394	4.2020
13	MITSUBISHI	GALANT	118	28101	4.1991
14	GENERAL MOTORS	CHEVROLET MALIBU	740	177262	4.1746
15	SUZUKI	FORENZA	175	42550	4.1128
16	FORD MOTOR CO	FORD TAURUS	638	156882	4.0668
17	GENERAL MOTORS	CHEVROLET IMPALA	1044	262823	3.9723
18	GENERAL MOTORS	CHEVROLET COBALT	844	229576	3.6763
19	NISSAN	SENTRA	500	136351	3.6670
20	KIA	AMANTI	29	8133	3.5657
21	HYUNDAI	SONATA	605	170783	3.5425
22	MERCEDES-BENZ	215 (CL-CLASS)	79	22411	3.5251
23	MITSUBISHI	ENDEAVOR	51	14546	3.5061
24	SUZUKI	VERONA	7	2000	3.5000
25	HONDA	HONDA CIVIC	362	103981	3.4814
26	DAIMLERCHRYSLER	CHRYSLER PT CRUISER	457	131960	3.4632
27	DAIMLERCHRYSLER	JEEP GRAND CHEROKEE	303	88383	3.4283
28	BMW	M3	15	4394	3.4137
29	FORD MOTOR CO	LINCOLN LS	29	8499	3.4122
30	NISSAN	MAXIMA	210	63663	3.2986
31	NISSAN	350Z	100	30640	3.2637
32	FORD MOTOR CO	FORD FOCUS	436	135929	3.2076
33	FORD MOTOR CO	FORD CROWN VICTORIA	35	10955	3.1949
34	HYUNDAI	ACCENT	59	18685	3.1576
35	KIA	OPTIMA	143	45859	3.1183
36	MAZDA	6	190	67327	2.8220
37	FORD MOTOR CO	FORD MUSTANG	431	153977	2.7991
38	SUZUKI	RENO	22	7900	2.7848
39	MITSUBISHI	LANCER	121	43750	2.7657
40	GENERAL MOTORS	CHEVROLET AVEO	142	51353	2.7652
41	BMW	7	77	28012	2.7488
42	SUBARU	LEGACY/OUTBACK	59	21696	2.7194
43	DAIMLERCHRYSLER	CHRYSLER PACIFICA	224	82451	2.7168
44	MITSUBISHI	ECLIPSE	79	29582	2.6705
45	KIA	RIO	91	34103	2.6684
46	GENERAL MOTORS	CADILLAC DTS	173	65335	2.6479
47	BMW	M5	11	4309	2.5528
48	GENERAL MOTORS	CHEVROLET TRAILBLAZER	373	148522	2.5114
49	FORD MOTOR CO	LINCOLN TOWN CAR	97	40317	2.4059
50	TOYOTA	SCION TC	189	80576	2.3456
51	GENERAL MOTORS	CHEVROLET HHR	267	113967	2.3428
52	KIA	SPECTRA	184	79152	2.3246
53	TOYOTA	LEXUS LS	40	17220	2.3229
54	SUZUKI	VITARA/GRAND VITARA	107	46223	2.3149
55	GENERAL MOTORS	CADILLAC CTS	125	55066	2.2700
56	GENERAL MOTORS	BUICK RAINIER	26	11503	2.2603
57	NISSAN	ALTIMA	648	294015	2.2040
58	ISUZU	I SERIES PICKUP	10	4546	2.1997
59	BMW	6	17	7893	2.1538
60	TOYOTA	LEXUS SC	15	7008	2.1404
61	LOTUS	ELISE	3	1424	2.1067
62	GENERAL MOTORS	PONTIAC MONTANA VAN	44	20984	2.0968
63	GENERAL MOTORS	PONTIAC GTO	29	13857	2.0928
64	KIA	SORENTO	116	55515	2.0895
65	TOYOTA	TOYOTA CAMRY/SOLARA	517	252690	2.0460
66	JAGUAR	S-TYPE	14	6855	2.0423
67	AUDI	A8	11	5404	2.0355
68	BMW	M6	2	990	2.0202
69	DAIMLERCHRYSLER	JEEP WRANGLER	155	77976	1.9878
70	GENERAL MOTORS	CHEVROLET UPLANDER VAN	122	62521	1.9513
71	TOYOTA	TOYOTA COROLLA	653	336871	1.9384
72	GENERAL MOTORS	SATURN ION	186	96227	1.9329
73	GENERAL MOTORS	BUICK RENDEZVOUS	96	50649	1.8954

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2006 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2006—Continued

	Manufacturer	Make/model (line)	Thefts 2006	Production (mfr's) 2006	2006 Theft rate (per 1,000 vehicles produced)
74	VOLVO	S80	14	7567	1.8501
75	DAIMLERCHRYSLER	JEEP LIBERTY	266	146897	1.8108
76	NISSAN	INFINITI G35	107	59442	1.8001
77	TOYOTA	LEXUS GS	92	51221	1.7961
78	HYUNDAI	TIBURON	41	22959	1.7858
79	NISSAN	INFINITI FX45	3	1693	1.7720
80	GENERAL MOTORS	CADILLAC XLR	7	3963	1.7663
81	HONDA	HONDA S2000	10	5666	1.7649
82	AUDI	A6/A6 QUATTRO/S6/S6 AVANT	32	18143	1.7638
83	DAIMLERCHRYSLER	DODGE CARAVAN/GRAND CARAVAN	416	235960	1.7630
84	HYUNDAI	ELANTRA	174	99126	1.7553
85	FORD MOTOR CO	FORD FUSION	217	125335	1.7314
86	MAZDA	5	35	20328	1.7218
87	JAGUAR	X-TYPE	10	5994	1.6683
88	NISSAN	QUEST VAN	42	25378	1.6550
89	FORD MOTOR CO	FORD FREESTAR VAN	84	51143	1.6425
90	MERCEDES-BENZ	203 (C-CLASS)	89	54492	1.6333
91	FORD MOTOR CO	FORD FIVE HUNDRED	134	83031	1.6139
92	HUMMER	H3	116	72227	1.6060
93	MAZDA	RX–8	10	6415	1.5588
94	MERCEDES-BENZ	220 (S-CLASS)	22	14472	1.5202
95	GENERAL MOTORS	PONTIAC VIBE	77	51168	1.5048
96	FORD MOTOR CO	MERCURY MOUNTAINEER	46	30676	1.4995
97	NISSAN	FRONTIER PICKUP	112	75112	1.4911
98	TOYOTA	SCION XB	125	87219	1.4332
99	GENERAL MOTORS	BUICK LACROSSE/ALLURE	107	76029	1.4074
100	JAGUAR	XKR	1	713	1.4025
101	TOYOTA	TOYOTA TUNDRA PICKUP	36	25764	1.3973
102	GENERAL MOTORS	GMC ENVOY	68	48745	1.3950
103	VOLVO	S60	30	21734	1.3803
104	GENERAL MOTORS	CHEVROLET EQUINOX	170	124123	1.3696
105	JAGUAR	XK8	2	1463	1.3671
106	VOLKSWAGEN	PASSAT	85	63019	1.3488
107	NISSAN	MURANO	105	77852	1.3487
108	NISSAN	PATHFINDER	100	74219	1.3474
109	BMW	5	62	46563	1.3315
110	FORD MOTOR CO	FORD RANGER PICKUP	110	83737	1.3136
111	MAZDA	3	125	95420	1.3100
112	NISSAN	XTERRA	78	59988	1.3003
113	MAZDA	MPV VAN	13	10054	1.2930
114	FORD MOTOR CO	MERCURY GRAND MARQUIS	64	49578	1.2909
115	VOLKSWAGEN	GOLF/RABBIT/GTI	24	18806	1.2762
116	MITSUBISHI	OUTLANDER	13	10190	1.2758
117	FORD MOTOR CO	FORD ESCAPE	194	152125	1.2753
118	TOYOTA	TOYOTA MATRIX	70	56291	1.2435
119	GENERAL MOTORS	CHEVROLET COLORADO PICKUP	129	104675	1.2324
120	HONDA	HONDA ACCORD	391	328780	1.1892
121	TOYOTA	TOYOTA TACOMA PICKUP	221	195700	1.1293
122	HONDA	ACURA TSX	44	40480	1.0870
123	GENERAL MOTORS	GMC CANYON PICKUP	29	26744	1.0844
124	GENERAL MOTORS	SATURN VUE	103	95178	1.0822
125	AUDI	A3/A3 QUATTRO	12	11162	1.0751
126	MAZDA	TRIBUTE	35	33565	1.0428
127	TOYOTA	LEXUS ES	32	30735	1.0412
128	MERCEDES-BENZ	129 (SL-CLASS)	7	6731	1.0400
129	FORD MOTOR CO	FORD FREESTYLE	57	54980	1.0367
130	NISSAN	INFINITI M35/M45	42	40627	1.0338
131	TOYOTA	TOYOTA 4RUNNER	108	104758	1.0309
132	AUDI	A4/A4 QUATTRO/S4/S4 AVANT	49	48023	1.0203
133	FORD MOTOR CO	MERCURY MILAN	35	34506	1.0143
134	DAIMLERCHRYSLER	CHRYSLER TOWN & COUNTRY	177	175760	1.0071
135	TOYOTA	SCION XA	50	49664	1.0068
136	MERCEDES-BENZ	208 (CLK-CLASS)	17	17150	0.9913
137	GENERAL MOTORS	PONTIAC TORRENT	48	48750	0.9846
138	NISSAN	INFINITI FX35	17	17326	0.9812
139	SUBARU	IMPREZA	41	41987	0.9765
140	SUZUKI	AERIO	17	17417	0.9761
141	HYUNDAI	SANTA FE	32	32802	0.9756

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2006 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2006—Continued

	Manufacturer	Make/model (line)	Thefts 2006	Production (mfr's) 2006	2006 Theft rate (per 1,000 vehicles produced)
142	HONDA	ACURA 3.2 TL	74	77849	0.9506
143	GENERAL MOTORS	CHEVROLET CORVETTE	30	31595	0.9495
144	GENERAL MOTORS	BUICK LUCERNE	81	85961	0.9423
145	HYUNDAI	TUCSON	52	55399	0.9386
146	TOYOTA	TOYOTA AVALON	90	97247	0.9255
147	ASTON MARTIN	DB9	1	1085	0.9217
148	GENERAL MOTORS	CADILLAC FUNERAL COACH/HEARSE	1	1096	0.9124
149	MERCEDES-BENZ	210 (E-CLASS)	55	61563	0.8934
150	VOLVO	V50	4	4480	0.8929
151	VOLKSWAGEN	JETTA	108	123317	0.8758
152	FORD MOTOR CO	MERCURY MONTEGO	17	19464	0.8734
153	JAGUAR	XJ8/XJ8L	3	3444	0.8711
154	TOYOTA	LEXUS IS	43	49960	0.8607
155	BMW	3	127	151673	0.8373
156	FORD MOTOR CO	LINCOLN ZEPHYR	26	31265	0.8316
157	TOYOTA	TOYOTA RAV4	94	114912	0.8180
158	VOLVO	S40	20	24505	0.8162
159	ISUZU	ASCENDER	3	3857	0.7778
160	HYUNDAI	AZERA	19	24492	0.7758
161	PORSCHE	BOXSTER	4	5314	0.7527
162	PORSCHE	CAYMAN	4	5360	0.7463
163	SUBARU	B9 TRIBECA	22	30027	0.7327
164	VOLKSWAGEN	BENTLEY CONTINENTAL	3	4097	0.7322
165	VOLVO	XC90	24	32962	0.7281
166	KIA	SPORTAGE	30	42832	0.7004
167	FORD MOTOR CO	MERCURY MARINER	21	30137	0.6968
168	GENERAL MOTORS	PONTIAC SOLSTICE	13	18748	0.6934
169	VOLKSWAGEN	NEW BEETLE	27	41361	0.6528
170	HONDA	HONDA ELEMENT	29	45132	0.6426
171	GENERAL MOTORS	CADILLAC STS	20	31368	0.6376
172	BMW	Z4/M	7	10981	0.6375
173	TOYOTA	TOYOTA SIENNA VAN	120	192771	0.6225
174	TOYOTA	LEXUS RX	48	77147	0.6222
175	DAIMLERCHRYSLER	DODGE VIPER	1	1630	0.6135
176	PORSCHE	911	8	13407	0.5967
177	SAAB	9–2X	1	1731	0.5777
178	KIA	SEDONA VAN	30	52064	0.5762
179	MITSUBISHI	MONTERO	1	1778	0.5624
180	TOYOTA	TOYOTA HIGHLANDER	96	176213	0.5448
181	BMW	X3	15	27743	0.5407
182	MAZDA	MX–5 MIATA	11	20688	0.5317
183	SUBARU	FORESTER	28	54405	0.5147
184	FORD MOTOR CO	MERCURY MONTEREY VAN	2	4017	0.4979
185	HONDA	HONDA PILOT	73	147629	0.4945
186	SAAB	9–3	11	22542	0.4880
187	HONDA	ACURA 3.5 RL	6	12556	0.4779
188	VOLVO	V70	3	6355	0.4721
189	HONDA	HONDA CR-V	70	149659	0.4677
190	VOLVO	XC70	6	12895	0.4653
191	GENERAL MOTORS	SATURN RELAY	2	4935	0.4053
192	HONDA	HONDA ODYSSEY VAN	75	192364	0.3899
193	HONDA	ACURA MDX	20	51380	0.3893
194	BMW	MINI COOPER	17	51271	0.3316
195	SUBARU	BAJA	2	7498	0.2667
196	MAZDA	B SERIES PICKUP	1	4229	0.2365
197	GENERAL MOTORS	BUICK TERRAZA VAN	3	12767	0.2350
198	DAIMLERCHRYSLER	CHRYSLER CROSSFIRE	1	6186	0.1617
199	TOYOTA	TOYOTA PRIUS	14	87310	0.1603
200	MERCEDES-BENZ	170 (SLK-CLASS)	2	13475	0.1484
201	SUBARU	OUTBACK	5	57806	0.0865
202	ASTON MARTIN	VANQUISH	0	467	0.0000
224	ASTON MARTIN	VANTAGE	0	161	0.0000
203	AUDI	TT	0	1299	0.0000
223	BUGATTI	VEYRON	0	17	0.0000
204	FERRARI	MARANELLO/F1	0	1392	0.0000
220	FORD MOTOR CO	FORD GT	0	1729	0.0000
205	GENERAL MOTORS	CADILLAC LIMOUSINE	0	922	0.0000
206	HONDA	HONDA INSIGHT	0	803	0.0000

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2006 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2006—Continued

Manufacturer	Make/model (line)	Thefts 2006	Production (mfr's) 2006	2006 Theft rate (per 1,000 vehicles produced)
207 JAGUAR	VANDEN PLAS/SUPER V8	0	403	0.0000
208 JAGUAR	XJR	0	307	0.0000
221 JAGUAR	VANDEN PLAS/SUPER V8	0	1358	0.0000
219 LAMBORGHINI	GALLARDO	0	392	0.0000
209 MASERATI	GRANSPORT	0	51	0.0000
210 MASERATI	QUATTROPORTE	0	1609	0.0000
211 MASERATI	SPYDER/F1	0	777	0.0000
212 NISSAN	INFINITI Q45	0	140	0.0000
214 SAAB	9–5	0	11620	0.0000
215 SAAB	9–7X	0	5484	0.0000
222 SALEEN	S7	0	16	0.0000
216 SPYKER	C8	0	13	0.0000
218 TOYOTA	TOYOTA YARIS	0	2571	0.0000
213 VOLKSWAGEN	BENTLEY ARNAGE	0	228	0.0000
217 VOLKSWAGEN	PHAETON	0	259	0.0000

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8–15913 Filed 7–11–08; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 73, No. 135

Monday, July 14, 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

Commodity Credit Corporation

Payment Limitation and Payment Eligibility

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: As announced by this notice, the Commodity Credit Corporation (CCC) is implementing the provisions of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) regarding payment limitation and payment eligibility provisions (including the average adjusted gross income limitation) for the 2008 crop, fiscal, or program year. The 2008 Farm Bill authorizes payment limitations and payment eligibility provisions that were previously authorized for preceding commodity and conservation programs under the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill). As a result of this notice, CCC will be able to commence administration of payment limitation and payment eligibility provisions applicable to commodity and conservation programs for the 2008 crop, fiscal, or program year. Through a subsequent rule, CCC will implement payment limitation and payment eligibility provisions for 2009 through 2012.

DATES: *Effective Date:* July 11, 2008.

FOR FURTHER INFORMATION CONTACT: Salomon Ramirez, Director, Production, Emergencies and Compliance Division, Farm Service Agency, USDA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517; telephone: (202) 720–7641; e-mail: *salomon.ramirez@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: Currently, the regulations in 7 CFR part 1400, Payment Limitation and Payment Eligibility, cover payment limitation and payment eligibility applicable to most commodity and conservation programs administered by CCC, including the following:

- Direct and Counter-Cyclical Program (DCP) for covered commodities and peanuts governed by 7 CFR part 1412, Direct and Counter-Cyclical Program,
- Programs under which a producer realizes a gain from repaying a marketing assistance loan at a lower rate than the commodity's original loan rate and any program that authorizes a loan deficiency payment for a commodity; specifically, programs governed by either 7 CFR part 1421, Grains and Similarly Handled Commodities—Marketing Assistance Loans and Loan Deficiency Payments for the 2002 through 2007 Crop Years, or 7 CFR part 1427, Cotton, and
- The Conservation Reserve Program, as governed by 7 CFR part 1410, Conservation Reserve Program.

As explained in this notice, CCC will operate the 2008 payment limitation and payment eligibility provisions as required by the 2008 Farm Bill (Pub. L. 110–246) using the standards of 7 CFR part 1400, as they applied to the 2007 crops or 2007 crop year.

Sections 1603(h) and 1604(b) of the 2008 Farm Bill authorize a continuation, with respect to certain commodity programs for the 2008 crop, fiscal, or fiscal year, as appropriate, of the payment limitation and payment eligibility provisions (including the average adjusted gross income limitation), as authorized by sections 1001, 1001A, 1001B, and 1001D of the Food Security Act of 1985 (7 U.S.C. 1308, 1308–1, 1308–2, and 1308–3a), as in effect on September 30, 2007 and set forth in regulations at 7 CFR part 1400.

Section 2903 of the 2008 Farm Bill authorizes the continuation of payment limitations with respect to new Conservation Reserve Program (CRP) contracts as covered by the Food Security Act (16 U.S.C. 3831–3835) through September 30, 2008, using the same provisions of law applicable to the program or activity as existed on the day before the date of enactment of the 2008 Farm Bill and set forth in regulations at 7 CFR part 1400.

This notice announces that with respect to the DCP, marketing assistance loans, loan deficiency payments under Title I of the 2008 Farm Bill, and CRP under Title II of the 2008 Farm Bill CCC will implement payment limitation and payment eligibility provisions for the 2008 crop, fiscal, or program year based on the current regulation in 7 CFR part 1400, as it applied to the 2007 crop or 2007 crop year. However, CRP contracts will be governed by those payment limitation provisions in place when the contracts were executed. For other matters and for 2009 through 2012 crops, CCC plans to amend 7 CFR part 1400 to reflect changes required by the 2008 Farm Bill.

Environmental Review

FSA has determined that this change would not constitute a major Federal action that would significantly affect the quality of the human environment. Therefore, in accordance with the 7 CFR part 799, Environmental Quality and Related Environmental Concerns—Compliance with the National Environmental Policy Act, implementing the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), no environmental assessment or environmental impact statement will be prepared.

Signed at Washington, DC, on June 25, 2008.

Glen L. Keppy,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E8–16007 Filed 7–11–08; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability of proposed changes in the Natural Resources Conservation Service (NRCS) National Handbook of Conservation Practices for public review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of revised conservation practice standards in its National Handbook of Conservation Practices. These standards include: Residue Management, Seasonal (Code 344); Grassed Waterway (Code 412); Mulching (Code 484); Stripcropping (Code 585); Cross Wind Ridges (Code 588); Terrace (Code 600); Underground Outlet (Code 620); and Water and Sediment Control Basin (Code 638). NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into Section IV of their respective electronic Field Office Technical Guide. These practices may be used in conservation systems that treat highly erodible land or on land determined to be a wetland.

DATES: *Effective Dates:* Comments will be received for a 30-day period commencing with this date of publication. Final versions of these new or revised conservation practice standards will be adopted after the close of the 30-day period, and after consideration of all comments.

ADDRESSES: Comments should be submitted by one of the following methods:

1. *In writing to:* National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Washington, D.C. 20013–2890; or

2. *Electronically via e-mail to: Daniel.Meyer@wdc.usda.gov.*

FOR FURTHER INFORMATION: Copies of these standards can be downloaded or printed from the following Web site: *ftp://ftp-fc.sc.egov.usda.gov/NHQ/practice-standards/federal-register/.* Single copies of paper versions of these standards also are available from NRCS in Washington, DC. Submit individual inquiries in writing to Daniel Meyer, National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Room 6139—South, Washington, DC 20013–2890; or *e-mail: Daniel.meyer@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The amount of the proposed changes varies considerably for each of the Conservation Practice Standards addressed in this Notice. To fully understand the proposed changes, individuals are encouraged to compare these changes with each standard's current version shown at: *http://www.nrcs.usda.gov/technical/Standards/nhcp.html.* To aid in this comparison, following are highlights of the proposed revisions to each standard:

Residue Management, Seasonal (Code 344)—Substantial changes are reflected in the proposed revision to this standard:

(a) One new purpose was added to address soil condition.

(b) Under the ''General Criteria'' section, (1) the option to burn residue was removed, as burning residue is not compatible with the purposes of the practice; and (2) tillage operations permitted during the residue management period is limited to undercutting tools.

(c) The tillage criteria were removed from the ''Criteria to Reduce Sheet and Rill and Erosion from Wind'' and the ''Criteria to Provide Food and Escape Cover for Wildlife'' sections of the standard. Criteria were added to the ''Additional Criteria to Improve Soil Condition'' section. Under the ''Criteria to Manage Snow to Increase Plant-Available Moisture'' section, (1) the criteria for harvesting equipment stubble height was removed since this is covered in the trapping snow criteria; and (2) the tillage and field operations criteria was revised to be done perpendicular to the direction of the prevailing winds.

(d) The ''Considerations'' section was revised to include PM–10, soil organisms, and cover crops.

Grassed Waterway (Code 412)—Only one significant change is proposed to this standard:

(a) The ''Criteria'' section, under the Stability subsection, was changed to require stability analysis based on tractive stress, rather than the velocity approach previously required.

Mulching (Code 484)—Significant changes are proposed for this standard:

(a) The ''Purpose'' section was revised by (1) adding a purpose for reduction of airborne particulates; and (2) removing increased soil fertility from the ''improve soil condition'' purpose.

(b) Under the ''General Criteria'' section, (1) Animal manure was removed as an acceptable mulching material; (2) criteria were added to the use of manufactured mulches, and that the rate specified by the manufacturer is the ''minimum amount'' that is acceptable; and

(3) Criteria were added that the mulch material also must be free from pesticides and chemicals that may impede the planned use of the mulch.

(c) Under the ''Criteria for Soil Moisture'' section, the criteria requiring the mulch be applied prior to soil moisture loss were removed. Under the ''Criteria for Erosion Control'' section, the criteria that the mulch cover shall not exceed 80 percent for wood products and 90 percent for gravel/inorganic mulches were removed. Under ''Criteria to Establish Vegetative Cover'' section, the minimum cover was changed from 50 percent to 70 percent. Under the ''Criteria for Soil Condition'' section, all the criteria for animal manure and fertility were removed.

Stripcropping (Code 585)—Only minor changes have been proposed to this standard:

(a) The ''General Criteria'' section has been revised to require (1) Equal strip widths for erosion susceptible strips and erosion resistant strips; (2) that at least 50 percent of the rotation shall consist of erosion resistant crops or sediment trapping cover; and (3) that the same rotation shall be followed in each adjacent strip, while the year of the rotation is staggered to maintain alternating strips in an erosion resistant crop or cover.

(b) Under the ''Additional Criteria for Soil Erosion by Water * * *'' section, the criteria for maximum row grade have been modified to be the same as the Contouring Standard (330), and criteria for cover conditions on the field headlands/end rows have been added.

(c) The ''Considerations'' section of the standard was revised to remove the specific considerations for each of the practice purposes.

(d) The ''Operations and Maintenance'' section of the standard was revised to remove the specific operation and maintenance for each purpose and combined into one common list of activities for operation and maintenance.

Cross Wind Ridges (Code 588)—Substantial changes are proposed for this standard:

(a) The practice code is being changed from 589A.

(b) The ''Purposes'' section has been expanded to include providing protection to crops from wind-borne soil particles and to reduce soil particulate emissions to air.

(c) The criteria for design of ridge height and spacing have been changed to reflect changing prediction technologies, and additional criteria have been added to address directional placement and minimum spacing.

(d) The ''Considerations'' section has been greatly expanded to optimize use of the standard.

Terrace (Code 600)—Significant editing is proposed for the standard:

(a) Design information that is contained in other Agency technical references, such as the Revised Universal Soil Loss Equation parameters and equations for computing ridge heights, has been removed. Otherwise, the ''Criteria'' section of the standard has not been substantially altered.

Underground Outlet (Code 620)—Considerable editing to the standard is being proposed:

(a) To add clarity and readability, every section of the standard has been rewritten. However, the underlying design requirements contained in the ''Criteria'' section have not been significantly modified from the current version of the standard.

Water and Sediment Control Basin (Code 638)—Considerable editing to the standard is being proposed:

(a) Every section of the standard has been rewritten to add clarity and readability. However, the underlying design requirements contained in the ''Criteria'' section have not been significantly modified from the current version of the standard.

(b) The ''Considerations,'' ''Plans and Specifications,'' and ''Operations and Maintenance'' sections have been significantly expanded.

Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment all proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 30 days, NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made by NRCS regarding disposition of those comments, and a final determination of changes will be made.

Signed in Washington, DC, on July 2, 2008.

Arlen L. Lancaster,

Chief, Natural Resources Conservation Service.

[FR Doc. E8–16024 Filed 7–11–08; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Brazos Electric Power Cooperative, Inc.: Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of an Environmental Assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service, an agency delivering the United States Department of Agriculture (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development and/or the Agency, is issuing an Environmental Assessment (EA) in connection with possible impacts related to the construction and operation of a second 500 megawatt combined-cycle combustion turbine generation unit at Brazos Electric Power Cooperative's (Brazos) existing Jack County Plant Site, as proposed by Brazos, of Waco, Texas.

DATES: Written questions and comments on this notice must be received on or before July 14, 2008.

ADDRESSES: To obtain copies of the EA, or for further information, contact: Dennis E. Rankin, Environmental Protection Specialist, USDA Rural Development Utilities Programs, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, or e-mail: *drankin@wdc.usda.gov*; Rob Reid, Project Director, PBS&J, 206 Wild Basin Road, Suite 300, Austin, Texas 78746–8342, telephone: (512) 329–8342 or e-mail: *rreid@pbsj.com*; or David McDaniel, Brazos, 2404 LaSalle Avenue, Waco, Texas 76702–2585, telephone: (254) 750–6324 or e-mail: *dmcdaniel@brazoselectric.com*. The EA can be reviewed online at the Agency's Web site: *http://www.usda.gov/rus/water/ees/ea/htm* and at the following locations:

USDA, Rural Development Utilities Programs, 1400 Independence Avenue, Room 2244, Washington, DC 20250;

Brazos Electric Power Cooperative, 2404 La Salle Avenue, Waco, TX 76702;

Wise Electric Cooperative, Corner of Hale & Cowan Streets, Decatur, TX 76234;

Gladys Johnson Ritchie Public Library, 620 West College Street, Jacksboro, TX 76458;

Bridgeport Public Library, 2159 Tenth Street, Bridgeport TX 76426.

SUPPLEMENTARY INFORMATION: Brazos is proposing to construct a second 500 MW gas-fired combined-cycle electric generation unit at its existing Jack County Plant Site on Henderson Ranch Road near the Joplin Community in Jack County, Texas. The project will consist of two combustion turbines and heat recovery steam generators and one steam turbine with a water-cooled steam surface condenser.

PBS&J, an environmental consultant, prepared an EA for Rural Development that describes the project and assesses the proposed plant's environmental impacts. The Agency has conducted an independent evaluation of the EA and believes that it accurately assesses the impacts of the proposed project. No significant impacts are expected as a result of the construction of the project. The EA is available for public review at addresses provided above in the Notice.

Any final action by Rural Development related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the 7 CFR part 1794, Environmental Policies and Procedures.

Dated: July 8, 2008.

Mark S. Plank,

Director, Engineering and Environmental Staff, USDA/Rural Development Utilities Programs.

[FR Doc. E8–15915 Filed 7–11–08; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–868]

Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke in Part

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 folding metal tables and chairs (''FMTCs'') from the People's Republic of China (''PRC'') covering the period June 1, 2006, through May 31, 2007. We have preliminarily determined that Feili Furniture Development Limited Quanzhou City, Feili Furniture Development Co., Ltd., Feili Group (Fujian) Co., Ltd., and Feili (Fujian) Co., Ltd. (collectively ''Feili'') and Dongguan Shichang Metals Factory Co., Ltd. (''Shichang''), did not make sales below normal value (''NV'') during the period of review (''POR''). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

We invite interested parties to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act'').

EFFECTIVE DATE: July 14, 2008.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian 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) 482–6412 and (202)482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 2002, the Department published the antidumping duty order on FMTCs from the PRC. *See Antidumping Duty Order: Folding Metal Tables and Chairs From the People's Republic of China*, 67 FR 43277 (June 27, 2002). On June 1, 2007, the Department published a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 30542 (June 1, 2007). In accordance with 19 CFR 351.213(b)(1), interested parties made the following requests for review: (1) on June 2, 2007, Feili, a producer/exporter of subject merchandise, requested that the Department conduct an administrative review of its sales;[1] (2) on June 25, 2007, Meco Corporation (''Meco''), a domestic producer of the like product, and Cosco Home & Office Products (''Cosco''), a U.S. importer of subject merchandise, each requested that the Department conduct administrative reviews of Feili and New–Tec Integration (Xiamen) Co. Ltd. (''New–Tec'');[2] (3) on July 2, 2007,[3] New–Tec and Shichang, producers/exporters of subject merchandise, requested that the Department conduct an administrative review of their respective sales.[4]

On July 26, 2007, the Department published the initiation of the administrative review of the antidumping duty order on FMTCs from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 41057 (July 26, 2007).

The Department issued antidumping duty questionnaires to Shichang, Feili, and New–Tec on August 7, 2007. On September 4, 2007, Feili, Shichang, and New–Tec submitted a Section A questionnaire response (''AQR''), and on September 27, 2007, Shichang, Feili, and New–Tec submitted Section C and D questionnaire responses (''CQR'' and ''DQR,'' respectively). On November 27, 2007, the Department issued supplemental questionnaires to New–Tec and Feili. On December 18, 2007, New–Tec and Feili submitted supplemental questionnaire responses. On December 28, 2007, the Department issued a supplemental questionnaire to Shichang. On January 25, 2008, Shichang submitted a supplemental questionnaire response. On February 21, 2008, the Department requested the Office of Policy to provide a list of surrogate countries for this review. *See* Memorandum to Ron Lorentzen, Director, Office of Policy, ''Certain Folding Metal Tables and Chairs from the People's Republic of China: Request for Surrogate Country Selection'' (February 21, 2008). On February 21, 2008, the Office of Policy issued its list of surrogate countries. *See* Memorandum from Carole Showers, Acting Director, Office of Policy, ''Administrative Review of Certain Folding Metal Tables and Chairs (''Tables and Chairs'') from the People's Republic of China (PRC): Request for a List of Surrogate Countries'' (February 21, 2008) (''Surrogate Country Memorandum'').

On February 25, 2008, the Department requested interested parties to submit surrogate value information and to provide surrogate country selection comments. On March 4, 2008, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review until no later than May 30, 2008. *See Folding Metal Tables and Chairs from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 73 FR 11615 (March 4, 2008). Meco provided comments on publicly available information to value the factors of production (''FOP'') on March 10, 2008. None of the interested parties provided comments on the selection of a surrogate country. On March 17, 2008, Feili provided rebuttal comments on Meco's March 10, 2008, surrogate value submission. On May 12, 2008, Meco provided comments about applying surrogate values to Feili's and New–Tec's factor of cold–rolled steel.

On May 29, 2007, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review until no later than June 30, 2008. *See Folding Metal Tables and Chairs from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 73 FR 30881 (May 29, 2008). On May 30, 2008, New–Tec provided rebuttal comments on Meco's May 12, 2008, comments about applying surrogate values to New–Tec's factor of cold–rolled steel.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results of review.

Verification of Responses

As provided in section 782(i) of the Act, we intend to verify the information from Feili upon which we will rely in making our final results, including information relevant to revocation.

Period of Review

The POR is June 1, 2006, through May 31, 2007.

Scope of the Order

The products covered by this order consist of assembled and unassembled folding tables and folding chairs made primarily or exclusively from steel or other metal, as described below:

1) Assembled and unassembled folding tables made primarily or exclusively from steel or other metal (folding metal tables). Folding metal tables include square, round, rectangular, and any other shapes with legs affixed with rivets, welds, or any other type of fastener, and which are made most commonly, but not exclusively, with a hardboard top covered with vinyl or fabric. Folding metal tables have legs that mechanically fold independently of one another, and not as a set. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal tables are the following:

a. Lawn furniture;
b. Trays commonly referred to as ''TV trays'';
c. Side tables;
d. Child–sized tables;
e. Portable counter sets consisting of rectangular tables 36″ high and matching stools; and,
f. Banquet tables. A banquet table is a rectangular table with a plastic or laminated wood table top approximately 28″ to 36″ wide by 48″ to 96″ long and with a set of folding legs at each end of the table.

[1] Feili's request for administrative review included a request for revocation.

[2] Although Cosco requested revocation on behalf of Feili and New-Tec, 19 CFR 351.222(e) only permits an exporter or a producer to request revocation. Thus, Cosco cannot request revocation because it is not an exporter or a producer.

[3] Because June 30, 2007, fell on a Saturday, the deadline for requesting a review was July 2, 2007, the next business day.

[4] New-Tec's request for administrative review included a request for revocation; however, based on the final results of the previous administrative review, New-Tec is not eligible for revocation. *See* ''Intent to Revoke'' section, below.

One set of legs is composed of two individual legs that are affixed together by one or more cross braces using welds or fastening hardware. In contrast, folding metal tables have legs that mechanically fold independently of one another, and not as a set.

2) Assembled and unassembled folding chairs made primarily or exclusively from steel or other metal (folding metal chairs). Folding metal chairs include chairs with one or more cross braces, regardless of shape or size, affixed to the front and/or rear legs with rivets, welds or any other type of fastener. Folding metal chairs include: those that are made solely of steel or other metal; those that have a back pad, a seat pad, or both a back pad and a seat pad; and those that have seats or backs made of plastic or other materials. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal chairs are the following:

a. Folding metal chairs with a wooden back or seat, or both;
b. Lawn furniture;
c. Stools;
d. Chairs with arms; and
e. Child–sized chairs.

The subject merchandise is currently classifiable under subheadings 9401.71.0010, 9401.71.0030, 9401.79.0045, 9401.79.0050, 9403.20.0015, 9403.20.0030, 9403.70.8010, 9403.70.8020, and 9403.70.8030 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[5] Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of the order is dispositive.

Based on a request by RPA International Pty., Ltd. and RPS, LLC, the Department ruled on January 13, 2003, that poly–fold metal folding chairs are within the scope of the order.

On May 5, 2003, in response to a request by Staples, the Office Superstore Inc. (''Staples''), the Department issued a scope ruling that the chair component of Staples' ''Complete Office–To-Go,'' a folding chair with a tubular steel frame and a seat and back of plastic, with measurements of: height: 32.5 inches; width: 18.5 inches; and depth: 21.5 inches, is covered by the scope of the order.

On September 7, 2004, the Department found that table styles 4600 and 4606 produced by Lifetime Plastic Products Ltd. are within the scope of the order.

On July 13, 2005, the Department issued a scope ruling determining that ''butterfly'' chairs are excluded from the scope of the antidumping duty order. Butterfly chairs are described as consisting of a collapsible metal rod frame and a cover, such that when the chair frame is spread open, the pockets of the cover are slipped over the upper ends of the frame and the cover provides both the seating surface and back of the chair. The frame consists of eight s–shaped pieces (with the ends offset at almost a 90–degree angle) made from metal rods that are connected by hinges. In order to collapse the frame, the chair cover must be removed. The frame is collapsed by moving the four legs inward until they meet in the center, similar to the folding mechanism of a pocket umbrella.

On July 13, 2005, the Department issued a scope ruling determining that folding metal chairs, with wooden seats that have been padded with foam and covered with fabric or polyvinyl chloride and attached to the tubular steel seat frame with screws, are within the scope of the antidumping duty order.

On May 1, 2006, the Department issued a scope ruling determining that ''moon chairs'' are not included within the scope of the antidumping duty order. Moon chairs are described as containing circular, fabric–padded, concave cushions that envelop the user at approximately a 105–degree reclining angle. The fabric cushion is ringed and supported by two curved 16–mm steel tubes. The cushion is attached to this ring by nylon fabric. The cushion is supported by a 16–mm steel tube four–sided rectangular cross–brace mechanism that constitutes the moon chair's legs. This mechanism supports and attaches to the encircling tubing and enables the moon chair to be folded. To fold the chair, the user pulls on a fabric handle in the center of the seat cushion of the chair.

On October 4, 2007, the Department determined that International E–Z Up Inc.'s Instant Work Bench is not within the scope of the antidumping duty order from the PRC because E–Z Up's Instant Work Bench's legs and weight do not match the description of folding metal tables in the scope of the order or in the ITC's final report.

On April 18, 2008, the Department issued a scope ruling determining that Ignite USA LLC's Vika Twofold 2–in–1 workbench/scaffold is not within the scope of the antidumping duty order because the rotating leg mechanism differs from folding metal tables that are subject to the order, and its weight is almost twice as much as the expected maximum weight for folding metal tables.

Non–Market Economy Country Status

No party contested the Department's treatment of the PRC as a non–market economy (''NME'') country, and the Department has treated the PRC as an NME country in all past antidumping duty investigations and administrative reviews and continues to do so in this case. *See, e.g., Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 27074, 27075 (May 14, 2007). No interested party in this case has argued that we should do otherwise. Designation as an NME country remains in effect until it is revoked by the Department. *See* Section 771(18)(C)(i) of the Act.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's FOPs, valued in a surrogate market–economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more market–economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the ''Normal Value'' section below. *See* Memorandum to Wendy Frankel, Director, Office 8, AD/CVD Operations, ''Preliminary Results of the 2006–2007 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Surrogate Value Memorandum'' (June 30, 2008) (''Surrogate Value Memorandum'').

The Department determined that India, Indonesia, the Philippines, Colombia, and Thailand are countries comparable to the PRC in terms of economic development. *See* Surrogate Country Memorandum. Once we have identified the countries that are economically comparable to the PRC, we select an appropriate surrogate country by determining whether an economically comparable country is a

[5] Originally the scope included HTSUS number 9403.20.0010 but, effective July 1, 2003, HTSUS number 9403.20.0010 (metal household furniture) was eliminated from the HTS code. HTSUS numbers 9403.20.0011 (ironing boards) and 9403.20.0015 (other) were added in its place. HTSUS number 9403.20.0015 contains merchandise in HTSUS number 9403.20.0010 except for ironing boards.

significant producer of comparable merchandise and whether the data for valuing FOPs is both available and reliable.

The Department has determined that India is the appropriate surrogate country for use in this review. The Department based its decision on the following facts: (1) India is at a level of economic development comparable to that of the PRC; (2) India is a significant producer of comparable merchandise; and (3) India provides the best opportunity to use quality, publicly available data to value the FOPs. On the record of this review, we have usable surrogate financial data from India, but no such surrogate financial data from any other potential surrogate country. Additionally, the data submitted by both parties for our consideration as potential surrogate values are sourced from India.

Therefore, because India best represents the experience of producers of comparable merchandise operating in a surrogate country, we have selected India as the surrogate country and, accordingly, have calculated NV using Indian prices to value the respondents' FOPs, when available and appropriate. *See* Surrogate Value Memorandum. We have obtained and relied upon publicly available information wherever possible.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994) (''*Silicon Carbide*''). However, if the Department determines that a company is wholly foreign–owned or located in a market economy, then a separate–rate analysis is not necessary to determine whether it is independent from government control.

1. Wholly Foreign–Owned

Feili and Shichang reported that they are wholly owned by market–economy entities. Therefore, consistent with the Department's practice, a separate–rates analysis is not necessary to determine whether Feili's and Shichang's export activities are independent from government control, and we have preliminarily granted a separate rate to Feili and Shicheng.

2. Located in a Market Economy with No PRC Ownership

No companies in this administrative review are located outside the PRC. Therefore, we are not addressing this ownership structure in these preliminary results of review.

3. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese–Owned Companies

New–Tec stated that is a joint venture between Chinese and foreign companies. Therefore, the Department must analyze whether New–Tec can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[6]

New–Tec has placed documents on the record to demonstrate the absence of *de jure* control including its list of shareholders, business license, and the Company Law of the PRC (''Company Law''). Other than limiting New–Tec to activities referenced in the business license, we found no restrictive stipulations associated with the license. In addition, in previous cases the Department has analyzed the Company Law and found that it establishes an absence of *de jure* control, lacking record evidence to the contrary.[7] We have no information in this segment of the proceeding that would cause us to reconsider this determination. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control for New–Tec.

B. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[8] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

With regard to *de facto* control, New–Tec reported that: (1) it independently set prices for sales to the United States through negotiations with customers and these prices are not subject to review by any government organization; (2) it did not coordinate with other exporters or producers to set the price or to determine to which market the companies will sell subject merchandise; (3) the PRC Chamber of Commerce did not coordinate the export activities of New–Tec; (4) its general manager has the authority to contractually bind it to sell subject merchandise; (5) its board of directors appoints its general manager; (6) there is no restriction on its use of export revenues; (7) its shareholders ultimately determine the disposition of respective profits, and New–Tec has not had a loss in the last two years; and (8) none of New–Tec's board members or managers is a government official. Additionally, New–Tec's questionnaire responses did not suggest that pricing is coordinated among exporters. Furthermore, our analysis of New–Tec's questionnaire responses reveals no other information indicating government control of its export activities. Therefore, based on the information on the record, we preliminarily determine that there is an absence of *de facto* government control

[6] *See Sparklers*, 56 FR at 20589.

[7] *See, e.g., Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results, Partial Rescission and Termination of a Partial Deferral of the 2002-2003 Administrative Review*, 69 FR 65148, 65150 (November 10, 2004).

[8] *See Silicon Carbide, 59 FR at 22587; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

with respect to New–Tec's export functions and that New–Tec has met the criteria for the application of a separate rate.

The evidence placed on the record of this review by New–Tec demonstrates an absence of *de jure* and *de facto* government control with respect to its exports of subject merchandise, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, we have preliminarily granted a separate rate to New–Tec.

Date of Sale

19 CFR 351.401(i) states that:

> In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

See also Allied Tube and Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1090–1092 (CIT 2001) (upholding the Department's rebuttable presumption that invoice date is the appropriate date of sale). After examining the questionnaire responses and the sales documentation placed on the record by Feili, Shichang, and New–Tec, we preliminarily determine that invoice date is the most appropriate date of sale for each respondent. We made this determination based on statements on the record that indicate that Feili's, Shichang's, and New–Tec's invoices establish the material terms of sale to the extent required by our regulations.[9] Nothing on the record rebuts the presumption that invoice date should be the date of sale.

Normal Value Comparisons

To determine whether sales of FMTCs to the United States by Feili, Shichang, and New–Tec were made at less than NV, we compared export price (''EP'') to NV, as described in the ''Export Price,'' and ''Normal Value'' sections of this notice, pursuant to section 771(35) of the Act.

Export Price

Because Feili, Shichang, and New–Tec sold subject merchandise to unaffiliated purchasers in the United States prior to importation into the United States or to unaffiliated resellers outside the United States with knowledge that the merchandise was destined for the United States, and use of a constructed export price methodology is not otherwise indicated, we have used EP in accordance with section 772(a) of the Act.

We calculated EP based on the free–on-board or delivered price to unaffiliated purchasers for Feili, Shichang, and New–Tec. From this price, we deducted amounts for foreign inland freight, international movement expenses, air freight, brokerage and handling, and billing adjustments, as applicable, pursuant to section 772(c)(2)(A) of the Act.[10]

We used three sources to calculate a surrogate value for domestic brokerage expenses. The Department averaged July 2004–June 2005 data contained in the January 9, 2006, public version of Kejriwal Paper Ltd.'s (''Kejriwal'') response submitted in the antidumping duty investigation of lined paper products from India,[11] the February 2004–January 2005 data contained in the May 24, 2005, public version of Agro Dutch Industries Limited's (''Agro Dutch'') response submitted in the administrative review of the antidumping duty order on certain preserved mushrooms from India,[12] and December 2003–November 2004 data contained in the February 28, 2005, public version of Essar Steel's (''Essar'') response submitted in the antidumping duty administrative review of hot–rolled carbon steel flat products from India.[13] The brokerage expense data reported by Kejriwal, Essar, and Agro Dutch in their public versions are ranged data. The Department first derived an average per–unit amount from each source. Then the Department adjusted each average rate for inflation. Finally, the Department averaged the three per–unit amounts to derive an overall average rate for the POR. *See* Surrogate Value Memorandum.

To value truck freight, we used the freight rates published by Indian Freight Exchange, available at http://www.infreight.com. Where applicable, we valued air freight using the rates published on the UPS website: http://www.ups.com. The truck and air–freight rates are not contemporaneous with the POR; therefore, we made adjustments for inflation. *See* Surrogate Value Memorandum.

Zero–Priced Transactions

In the final results of the 2003–2004, 2004–2005, and the 2005–2006 administrative reviews of FMTCs, we included Feili and/or New–Tec's zero–priced transactions in the margin calculation because the record demonstrated that Feili and New–Tec provided many pieces of the same product, indicating that these ''samples'' did not primarily serve for evaluation or testing of the merchandise; and Feili and New–Tec provided ''samples'' to the same customers to whom it was selling the same products in commercial quantities.[14] As a result, we concluded that these transactions were not what we consider to be samples because Feili and New–Tec were not providing product to entice its U.S. customers to buy the product.

[9] *See* Feili's CQR at C-10; Shichang's CQR at 11; and New Tec's CQR at 11.

[10] *See* Memorandum regarding ''Analysis for the Preliminary Results of the 2006-2007 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Dongguan Shichang Metals Factory Co., Ltd. ('Shichang')'' (June 30, 2008) (''Shichang Preliminary Analysis Memorandum''); Memorandum regarding ''Analysis for the Preliminary Results of the 2006-2007 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: New-Tec Integration (Xiamen) Co. Ltd. (''New-Tec'')'' (June 30, 2008) (''New-Tec Preliminary Analysis Memorandum''); and Memorandum regarding ''Analysis for the Preliminary Results of the 2006-2007 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Feili Furniture Development Limited Quanzhou City, Feili Furniture Development Co., Ltd., Feili Group (Fujian) Co., Ltd., Feili (Fujian) Co., Ltd. (collectively, 'Feili')'' (June 30, 2008) (''Feili Preliminary Analysis Memorandum'').

[11] *See Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products from India*, 71 FR 19706 (April 17, 2006) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006)).

[12] *See Certain Preserved Mushrooms From India: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 10597, 10599 (March 4, 2005) (unchanged in *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005)).

[13] *See Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018, 2021 (January 12, 2006) (unchanged in *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 40694 (July 18, 2006)).

[14] *See Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006), and accompanying Issues and Decision Memorandum at Comment 4; *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 71509 (December 11, 2006), and accompanying Issues and Decision Memorandum at Comment 4; and *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 71355 (December 17, 2007), and accompanying Issues and Decision Memorandum at Comments 10 and 11.

The U.S. Court of Appeals for the Federal Circuit (''Federal Circuit'') has not required the Department to exclude zero–priced or *de minimis* sales from its analysis but, rather, has defined a sale as requiring ''both a transfer of ownership to an unrelated party and consideration.''[15] The Court of International Trade (''CIT'') in *NSK Ltd. v. United States* stated that it saw ''little reason in supplying and re–supplying and yet re–supplying the same product to the same customer in order to solicit sales if the supplies are made in reasonably short periods of time,'' and that ''it would be even less logical to supply a sample to a client that has made a recent bulk purchase of the very item being sampled by the client.''[16] Furthermore, the Courts have consistently ruled that the burden rests with a respondent to demonstrate that it received no consideration in return for its provision of purported samples.[17] Moreover, even where the Department does not ask a respondent for specific information to demonstrate that a transaction is a sample, the respondent has the burden of presenting the information in the first place to demonstrate that its transactions qualify for exclusion.[18]

An analysis of Feili's, New–Tec's and Shichang's Section C computer sales listings reveals that all companies provided zero–priced merchandise to the same customers to whom they were selling, or had sold, the same products in commercial quantities. Consequently, based on the facts cited above, the guidance of past court decisions, and our previous decisions, for the preliminary results of this review, we have not excluded these transactions from the margin calculation for either Feili, New–Tec or Shichang.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

The FOPs include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. In accordance with 19 CFR 351.408(c)(1), the Department normally uses publicly available information to value the FOPs. However, when a producer sources a meaningful amount of an input from a market–economy country and pays for it in market–economy currency, the Department will normally value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see also Lasko Metal Products v. United States*, 43 F.3d 1442, 1445–1446 (Fed. Cir. 1994) (affirming the Department's use of market–based prices to value certain FOPs). Further, the Department disregards prices it has reason to suspect may be dumped or subsidized. *See, e.g., China National Machinery Import & Export Corp. v. United States*, 293 F. Supp. 2d 1334, 1339 (CIT 2003) (aff'd, 104 Fed. Appx. 183 (Fed. Cir. 2004)).

We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[19] The legislative history explains that we need not conduct a formal investigation to ensure that such prices are not subsidized.[20] Rather, Congress indicated that the Department should base its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries in calculating the Indian import–based surrogate values. In instances where respondents source a market economy input solely from suppliers located in these countries, we used Indian import–based surrogate values to value the input. In addition, we excluded Indian import data from NME countries and unidentified countries from our surrogate value calculations.[21]

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by respondents for the POR. To calculate NV, we multiplied the reported per–unit factor quantities by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to render them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate (*i.e.*, where the sales terms for the market–economy inputs were not delivered to the factory). This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). For a detailed description of all surrogate values used for respondents, *see* the Surrogate Value Memorandum.

Except as noted below, we valued raw material inputs using the weighted–average unit import values derived from the Monthly Statistics of the Foreign Trade of India, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India in the World Trade Atlas, available at http://www.gtis.com/wta.htm (''WTA''). The WTA data are reported in rupees and are contemporaneous with the POR. Where we could not obtain publicly available information contemporaneous with the POR with which to value FOPs, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index as published in the *International Financial Statistics* of the International Monetary Fund. We used the U.S. Consumer Price Index as published in the Bureau of Labor Statistics, to adjust the air freight and air fuel surcharge values as published in AFMS Transportation Management

[15] *See NSK Ltd. v. United States*, 115 F.3d 965, 975 (Fed. Cir. 1997).

[16] *NSK Ltd .v. United States*, 217 F. Supp. 2d 1291, 1311-1312 (CIT 2002).

[17] *See, e.g., Zenith Electronics Corp. v. United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993) (explaining that the burden of evidentiary production belongs ''to the party in possession of the necessary information''). *See also Tianjin Machinery Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992) (''The burden of creating an adequate record lies with respondents and not with {the Department}.'') (citation omitted).

[18] *See NTN Bearing Corp. of America. v. United States*, 997 F.2d 1453, 1458 (Fed. Cir. 1993).

[19] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

[20] *See Omnibus Trade and Competitiveness Act of 1988, Conference Report to Accompanying H.R. 3, H.R. Rep.* 100-576 at 590-91 (1988).

[21] For a detailed description of all surrogate values used for each respondent, see Surrogate Value Memorandum.

Group. *See* Surrogate Value Memorandum.

We further adjusted material input values to account for freight costs incurred between the supplier and respondent. We used the freight rates published by Indian Freight Exchange available at http://www.infreight.com, to value truck freight, for the period June 1, 2005, to October 31, 2005, and made an adjustment for inflation.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from a market–economy supplier in meaningful quantities (*i.e.*, not insignificant quantities), we use the actual price paid by respondents for those inputs, except when prices may have been distorted by findings of dumping by the PRC and/or subsidies.[22] Feili, New–Tec and Shichang each made significant raw materials purchases from market–economy suppliers. Therefore, in accordance with our practice outlined in *Antidumping Methodologies: Market Economy Inputs*,[23] we used the actual purchases of these inputs to value these inputs.[24] Where the quantity of the input purchased from market–economy suppliers is insignificant, the Department will not rely on the price paid by an NME producer to a market–economy supplier because it cannot have confidence that a company could fulfill all its needs at that price. In instances where the quantity purchased was insignificant but meaningful, we determined the surrogate value as the weighted–average value of the market–economy input price and the Indian import value of the input. When the market–economy purchases of a given input were not meaningful, we disregarded the market–economy input price and based the surrogate value on the Indian import value. For a complete description of the factor values we used, *see* Surrogate Value Memorandum, Feili Preliminary Analysis Memorandum, Shichang Preliminary Analysis Memorandum, and New–Tec Preliminary Analysis Memorandum.

To value diesel oil and liquid petroleum gas, we used per–kilogram values obtained from Bharat Petroleum, published February 22, 2007. We made adjustments to account for inflation and freight costs incurred between the supplier and respondents. See Surrogate Value Memorandum.

To value electricity, we used the fourth quarter of 2002 electricity price data from International Energy Agency, Key World Energy Statistics, adjusted for inflation. *See* Surrogate Value Memorandum.

To value water, we used the Revised Maharashtra Industrial Development Corporation water rates for June 1, 2003, available at http://www.midcindia.com/water–supply, adjusted for inflation. *See* Surrogate Value Memorandum.

For direct labor, indirect labor and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rate as reported on the Import Administration's home page. *See* Expected Wages of Selected NME Countries (finalized May 2008) (available at http://ia.ita.doc.gov/wages). The source of these wage rate data on the Import Administration's web site is the *Yearbook of Labour Statistics 2003*, ILO (Geneva: 2003), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates range from 1998 to 2004. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by each respondent. *See* Surrogate Value Memorandum.

For factory overhead, selling, general, and administrative expenses (''SG&A''), and profit values, we used information from Godrej and Boyce Manufacturing Co. Ltd. for the year ending March 31, 2007.[25] From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy (''ML&E'') costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A. *See* Surrogate Value Memorandum for a full discussion of the calculation of these ratios. We did not use the surrogate financial statements of Tube Investments of India Limited because it is not a producer of comparable merchandise.[26] Additionally, we did not use the surrogate financial statements of Infiniti Modules Pvt. Ltd. for the year ending March 31, 2006, because they are not contemporaneous with the POR and are missing the profit and loss statement, thus affecting the Department's ability to analyze the company's income and expenses for purposes of surrogate financial ratio calculations.[27] Finally, we disregarded the surrogate financial statements of Infiniti Modules Pvt. Ltd. for the year ending March 31, 2005, and Godrej and Boyce Manufacturing Co. Ltd. for the year ending March 31, 2006, because they are not contemporaneous with the POR.[28]

For packing materials, we used the per–kilogram values obtained from the WTA and made adjustments to account for freight costs incurred between the PRC supplier and respondent. *See* Surrogate Value Memorandum.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. However, where we calculated SV based on the weighted–average value of market–economy purchases and surrogate values, we made currency conversions using the average exchange rate for the POR.

Intent to Revoke in Part

On June 2, 2007, and July 2, 2007, respectively, Feili and New–Tec requested that, pursuant to 19 CFR 351.222(b)(2), the Department revoke the antidumping duty order, in part, based on their three consecutive years of sales at not less than NV. Feili and New–Tec submitted, along with their revocation requests, a certification stating that: 1) each company sold subject merchandise at not less than NV during the POR, and that in the future each company would not sell such merchandise at less than NV (*see* 19 CFR 351.222(e)(1)(i); 2) each company has sold the subject merchandise to the United States in commercial quantities during each of the past three years (*see* 19 CFR 351.222(e)(1)(ii); and 3) each company agreed to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2)(iii), and as referenced at 19 CFR 351.222(e)(1)(iii).

Based on the preliminary results in this review and the final results of the two preceding reviews (*see Folding*

[22] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

[23] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-19 (October 19, 2006) (''*Antidumping Methodologies: Market Economy Inputs*'').

[24] For a detailed description of all actual values used for market-economy inputs, see the company-specific analysis memoranda dated concurrently with this notice.

[25] *See* Meco's May 12, 2008, Surrogate Value Comments at Exhibit 7D.

[26] *See* Meco's May 12, 2008, Surrogate Value Comments at Exhibit 7E; and Feili's March 17, 2008, Surrogate Value Rebuttal Comments at Exhibit 1.

[27] *See* Meco's May 12, 2008 Surrogate Value Comments at Exhibit 7B; and Feili's March 17, 2008, Surrogate Value Rebuttal Comments at Exhibit 2.

[28] *See* Meco's May 12, 2008, Surrogate Value Comments at Exhibits 7A and 7C.

Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 71 FR 2905 (January 18, 2006), and *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 71509 (December 11, 2006), we have preliminarily determined that Feili has demonstrated three consecutive years of sales at not less than NV. Furthermore, Feili claims that its aggregate sales to the United States have been made in commercial quantities during the last three segments of this proceeding. We intend to pursue this issue after these preliminary results. We have preliminarily determined that New–Tec has not demonstrated three consecutive years of sales at not less than NV because New–Tec's margin was above *de minimis* in the final results of the prior administrative review, covering the year immediately preceding the current POR. *See Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 71509 (December 11, 2006). Accordingly, we have determined that New–Tec is not eligible for revocation in this review. In addition, the preliminary results for New–Tec indicate that its calculated margin in this review is also above *de minimis*.

Interested parties are invited to comment in their case briefs on all of the requirements that must be met by Feili and New Tec under 19 CFR 351.222 to qualify for revocation from the antidumping duty order. Based on the above facts and absent any evidence to the contrary, the Department preliminarily determines that the continued application of the order to Feili is not otherwise necessary to offset dumping. Therefore, if these preliminary findings are affirmed in our final results, we intend to revoke the order with respect to merchandise exported by Feili. In accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption on or after June 1, 2007, and will instruct CBP to refund any cash deposit.

Preliminary Results of Review

We preliminarily determine that the following weighted–average dumping margins exist:

Manufacturer/Exporter	Margin (Percent)
New–Tec	0.64
Feili	0.08*
Shichang	0.01*

**de minimis*

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within seven days of the release of the final verification report issued in this review. *See* 19 CFR 351.309(c). Interested parties may file rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, no later than five days after the date on which the case briefs are due. *See* 19 CFR 351.309(d). Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). We will hold a hearing, if requested, two days after the deadline for submission of the rebuttal briefs. *See* 19 CFR 351.310(d). The Department requests that parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3), the deadline for submission of publicly available information to value FOPs under 19 CFR 351.408(c) is 20 days after the date of publication of the preliminary results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline), the applicable deadline for submission of such factual information, an interested party has ten days to submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, pursuant to 19 CFR 351.301(c)(1), the Department generally will not accept in the rebuttal submission additional, alternative surrogate value information not previously on the record, if the deadline for submission of surrogate value information has passed. *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2. Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the entered customs value for the subject merchandise on each importer's/customer's entries during the POR, as appropriate.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the above–listed respondents, which have a separate rate, the cash deposit rate will be the company–specific rate established in the final results of review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously investigated or reviewed PRC and non–PRC 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 that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 70.71 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 exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–15949 Filed 7–11–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–896]

Magnesium Metal 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 magnesium metal from the People's Republic of China (''PRC'') covering the period April 1, 2006, through March 30, 2007. On March 6, 2008, we published our preliminary results. *See Magnesium Metal From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 12122 (''*Preliminary Results*''). We invited interested parties to comment on these 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: July 14, 2008.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4081.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 2008, the Department published its *Preliminary Results*. The mandatory respondent in this case is Tianjin Magnesium International Co., Ltd., (''TMI''). TMI and the petitioner[1] submitted case briefs on April 7, 2008, and rebuttal briefs on April 14, 2008. In addition, the petitioner and TMI submitted requests for a hearing on April 7, 2008. The hearing was held on May 6, 2008. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act'').

Period of Review

The period of review (''POR'') for this administrative review is April 1, 2006, through March 31, 2007.

Scope of the Order

The product covered by this antidumping duty order is magnesium metal, which includes primary and secondary alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium–based scrap into magnesium metal. The magnesium covered by this antidumping duty order includes blends of primary and secondary magnesium.

The subject merchandise includes the following alloy magnesium metal products made from primary and/or secondary magnesium including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: products that contain 50 percent or greater, but less than 99.8 percent, magnesium, by weight, and that have been entered into the United States as conforming to an ''ASTM Specification for Magnesium Alloy''[2] and thus are outside the scope of the existing antidumping orders on magnesium from the PRC (generally referred to as ''alloy'' magnesium).

The scope of the antidumping duty order excludes the following merchandise: (1) all forms of pure magnesium, including chemical combinations of magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy''[3] (2) magnesium that is in liquid or molten form; and (3) mixtures containing 90 percent or less magnesium in granular or powder form, by weight, and one or more of certain non–magnesium granular materials to make magnesium–based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[4]

The merchandise subject to this antidumping duty order is currently classifiable under items 8104.19.00 and 8104.30.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS items are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Separate Rates

In proceedings involving non–market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single

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[1] The petitioner is U.S. Magnesium LLC.

[2] The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.*

[3] This material is already covered by existing antidumping orders. *See Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation*, 60 FR 25691 (May 12, 1995), and *Antidumping Duty Order: Pure Magnesium in Granular Form from the People's Republic of China*, 66 FR 57936 (November 19, 2001).

[4] This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000-2001 investigations of magnesium from the PRC, Israel, and Russia. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China*, 66 FR 49345 (September 27, 2001); *Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel*, 66 FR 49349 (September 27, 2001); *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation*, 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys because they are not chemically combined in liquid form and cast into the same ingot.

rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

In the *Preliminary Results*, we found that TMI demonstrated its eligibility for separate–rate status. We received no comments from interested parties regarding the separate rate status of these companies. In these final results of review, we continue to find that the evidence placed on the record of this review by the above–referenced company demonstrates an absence of government control, both in law and in fact, with respect to its exports of the merchandise under review. Thus, we have determined that TMI is eligible to receive a separate rate.

Surrogate Country

In the *Preliminary Results*, we treated the PRC as a NME country and, therefore, we calculated normal value in accordance with section 773(c) of the Act. Also, we stated that we selected India as the appropriate surrogate country to use in this review for the following reasons: (1) it is a significant producer of merchandise comparable to subject merchandise; and (2) it is at a level of economic development comparable to the PRC, pursuant to section 773(c)(4) of the Act. *See Preliminary Result*s, 73 FR at 12124. No interested party commented on our designation of the PRC as an NME country, nor the selection of India as the surrogate country. Therefore, for the final results of review, we have continued to treat the PRC as an NME country and have used the same surrogate country, India, for these final results.

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 Final Results of Magnesium Metal from the People's Republic of China,'' dated July 7, 2008 (''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 1117 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 the following changes in the margin calculations for TMI: (1) To value the pure magnesium scrap input we used import values from the Indian Import Statistics (World Trade Atlas ® online), which were published by the Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India, for pure magnesium listed under HTS 8104.11, (2) To value factory overhead, depreciation, selling, general and administrative expenses (''SG&A'') and profit, the Department used audited financial statements for the year ended March 31, 2007, for an Indian producer of aluminum, Madras Aluminum Company Limited (''Malco''), (3) To value three components of flux: magnesium chloride, sodium chloride and potassium chloride, we used an average Indian domestic price based on April 2006–March 2007 data contained in *Chemical Weekly*, (4) For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), the Department used the PRC regression–based wage rate as reported on Import Administration's website, Import Library, Expected Wages of Selected NME Countries, revised in May 2008, http://ia.ita.doc.gov/wages/04wages/04wages–010907.html. The source of these wage–rate data is the Yearbook of Labor Statistics 2006, ILO (Geneva: 2006), Chapter 5B Wages in Manufacturing. The years of the reported wage rates range from 2004 to 2005. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, the Department has applied the same wage rate to all skill levels and types of labor reported by the respondents. *See* Factor Valuation Memorandum.

Final Results of the Review

The Department has determined that the following weighted–average dumping margin exists for TMI for the period April 1, 2006, through March 31, 2007:

MAGNESIUM METAL FROM THE PRC

Exporter	Weighted–Average Margin (Percent)
Tianjin Magnesium International Co., Ltd.	0.00

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 or customer–specific assessment rates for merchandise subject to this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of the administrative review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by TMI no cash deposit will be required; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash–deposit rate will be PRC–wide entity rate of 141.49 percent; (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 exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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 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.

This administrative review and this notice are in accordance with sections 751(a)(1) and

777(i) of the Act, 19 CFR 351.213, and 19 CFR 351.221(b)(4).

Dated: July 7, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Issues and Decision Memorandum

Comment 1: Whether the Department should assign a combination rate to TMI
Comment 2: Whether the Department should value the pure magnesium scrap input using the surrogate value for pure magnesium
Comment 3: Which Indian companies should be used to calculate the surrogate financial ratios
Comment 4: Whether to use Indian import statistics from World Trade Atlas or domestic prices from *Chemical Weekly* to value flux
Comment 5: Whether to use the data from India Bureau of Mines Yearbook to value Steam Coal
Comment 6: Whether the Department should use the updated China Wage rate

[FR Doc. E8–15964 Filed 7–11–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A–570–894

Certain Tissue Paper Products from the People's Republic of China: Notice of Extension of Time Limit for Final Results of Second Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 14, 2008.

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, NW, Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2008, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of this antidumping duty administrative review. *See Certain Tissue Paper Products from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 18497 (April 04, 2008).

Extension of Time Limits for Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and section 351.213(h)(1) of the Department's regulations, the Department shall issue the final results of review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. The final results are currently due on August 2, 2008. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend this time period to 180 days.

In the instant review, the Department finds that the current deadline for the final results is impracticable. Specifically, the Department placed documentation from Customs and Border Protection (''Customs'') regarding entries in this case on the record on June 30, 2008, and allowed interested parties to comment on these Customs entry packages. The Department requires additional time to review and analyze interested party comments, case briefs and rebuttal briefs because the office tasked with administering this antidumping duty order is currently facing immediate statutory deadlines in several other administrative cases. As a result, the Department has determined to fully extend the current time limit for the completion of the final results of this administrative review until no later than October 1, 2008, in accordance with section 751(a)(3)(A) of the Act.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: July 08, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–15948 Filed 7–11–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–821]

Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 9, 2008, the U.S. Department of Commerce (''the Department'') published in the **Federal Register** its preliminary results of the administrative review of the countervailing duty (''CVD'') order on certain hot-rolled carbon steel flat products (''hot-rolled carbon steel'') from India for the period of review (''POR'') January 1, 2006, through December 31, 2006. *See Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Preliminary Results of Countervailing Duty Administrative Review;* 73 FR 1578 (January 9, 2008) (''Preliminary Results''). We preliminarily found that Essar Steel Ltd. (''Essar''), Ispat Industries Ltd. (''Ispat''), JSW Steel Ltd. (''JSW'') and Tata Steel Ltd. (''Tata'') received countervailable subsidies during the POR. We received comments on our preliminary results from petitioners and all of the respondent companies, Essar, Ispat, JSW, and Tata. The final results are listed in the section ''Final Results of Review'' below.

DATES: *Effective Date:* July 14, 1008.

FOR FURTHER INFORMATION CONTACT: John Conniff at (202) 482–1009, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2001, the Department published in the **Federal Register** the CVD order on certain hot-rolled carbon steel flat products from India. *See Notice of Amended Final Determination and Notice of Countervailing Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from India,* 66 FR 60198 (December 3, 2001). On January 9, 2008, the Department published in the **Federal Register** its preliminary results of the administrative review of this order for the period January 1, 2006, through December 31, 2006. *See Preliminary Results*, 73 FR 1578. In accordance with 19 CFR 351.213(b), this administrative review covers Essar,

Ispat, JSW, and Tata, producers and exporters of subject merchandise. On March 6, 2008, the Department published in the **Federal Register** an extension of its final results of the instant administrative review. *See Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Extension of Final Results of Countervailing Duty Administrative Review*, 73 FR 12078 (March 6, 2008).

On January 17, 2008, February 26, 2008, March 4, 2008, and March 24, 2008, we issued supplemental questionnaires to Essar and we received responses on February 14, 2008, March 4, 2008, March 18, 2008 and March 31, 2008, respectively. On January 17, 2008, we also issued a supplemental questionnaire to the Government of India (''GOI'') and we received the response on February 14, 2008.

On January 18, 2008 and March 3, 2008, we issued supplemental questionnaires to Ispat, and we received responses on February 15, 2008 and March 21, 2008, respectively. On January 18, 2008, we also issued a supplemental questionnaire to the GOI and we received the response on February 8, 2008.

On January 11, 2008, we issued a supplemental questionnaire to Tata and we received a response on January 18, 2008. On January 11, 2008 we also issued a supplemental questionnaire to the GOI and received a response on February 20, 2008.

On March 6, 2008 through March 12, 2008, the Department conducted a verification of Tata. The Department issued its verification reports on April 17, 2008. A public version of this document is on file in the Central Records Unit (''CRU''), room 1117 of the main Commerce building.

In the *Preliminary Results*, we invited interested parties to submit briefs or request a hearing. On April 24, 2008, we received comments from Essar, Ispat, JSW, and Tata. In addition, we received comments from United States Steel Corporation and Nucor Corporation, the petitioners. On May 1, 2008, we received rebuttal comments from Essar, Ispat, Tata and petitioners. We received a request for a hearing from Essar and JSW on February 8, 2008 and April 22, 2008, respectively. On June 2, 2008, we held a public hearing in room 4205 of the Commerce Building. Parties can find a transcript of the hearing on file in the CRU of the main Commerce building.

Scope of Order

The merchandise subject to this order is certain hot-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, or a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in the scope of this order are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'') steels, high-strength low-alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low-carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTS''), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order.

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, ASTM specifications A543, A387, A514, A517, A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this order is currently classifiable in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon-quality steel covered by this order, including: vacuum-degassed fully stabilized; high-strength low-alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to this order is dispositive.

Period of Review

The POR for which we are measuring subsidies is from January 1, 2006, through December 31, 2006.

Analysis of Comments

On April 24, 2008 Essar, Ispat, JSW, Tata and petitioners filed comments. On May 1, 2008, Essar, Ispat, Tata and petitioners filed rebuttal comments. All issues in the respondents and petitioners case and rebuttal briefs are addressed in the accompanying Issues and Decision Memorandum for the Countervailing Duty Administrative Review on Certain Hot-Rolled Carbon Steel Flat Products from India (''Decision Memorandum''), which is hereby adopted by this notice. A listing of the issues that parties raised and to which we have responded is attached to this notice as Appendix I. Parties can find a complete discussion of the issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the CRU of the main commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov/frn*.

The paper copy and the electronic version of the Decision Memorandum are identical in content.

Final Results of Review

After reviewing comments from all parties, we have made adjustments to our calculations as explained in our Decision Memorandum. Consistent with the *Preliminary Results*, we find that Essar, Ispat, JSW, and Tata received countervailable subsidies during the POR.

Company	Total net countervailable subsidy rate
Essar Steel Ltd	17.50 percent *ad valorem*.
Ispat Industries Ltd ...	15.27 percent *ad valorem*.
JSW Steel Ltd	484.41 percent *ad valorem*.
Tata Steel Ltd	27.22 percent *ad valorem*.

Assessment Rates/Cash Deposits

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 to liquidate shipments of subject merchandise by Essar, Ispat, JSW, and Tata entered, or withdrawn from warehouse, for consumption on or after January 1, 2006, through December 31, 2006, at the *ad valorem* rates listed above. We will also instruct CBP to collect cash deposits for each respondent at the countervailing duty rate indicated above on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review.

For all non-reviewed companies, the Department has instructed CBP to assess countervailing duties at the cash deposit rates in effect at the time of entry, for entries between January 1, 2006, and December 31, 2006. The cash deposit rates for all companies not covered by this review are not changed by the results of this review.

Return or Destruction of Proprietary Information

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 7, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I—Issues in Decision Memorandum

Adverse Facts Available (AFA)

I. The Government of India (GOI)
II. JSW

Subsidies Valuation Information

I. Benchmarks for Loans and Discount Rates.
A. Short-Term Loan Benchmark.
B. Long-Term Benchmarks and Discount Rates.
II. Use of Uncreditworthy Benchmarks for Essar.
III. Allocation Period.

Analysis of Programs

I. Programs Determined To Be Countervailable:
A. GOI Programs.
1. Pre- and Post-Shipment Export Financing.
2. Export Promotion Capital Goods Scheme (EPCGS).
3. Duty Entitlement Passbook Scheme (DEPS).
4. Sale of High-Grade Iron Ore for Less Than Adequate Remuneration.
5. Advance License Program (ALP).
6. Loan Guarantees from the GOI.
7. Steel Development Fund (SDF) Loans.
8. Captive Mining of Iron Ore.
9. Captive Mining Rights of Coal.
10. Duty Free Replenishment Certificate (DFRC) Scheme.
B. State Government of Gujarat Programs.
State Government of Gujarat (SGOG) Tax Incentives.
C. State Government of Karnataka (SGOK) Programs.
1. SGOK's New Industrial Policy and Package of Incentives and Concessions of 1993 (1993 KIP).
a. Total AFA for Certain Sub-Programs.
b. VAT Refunds.
2. Other SGOK Subsidies.
3. SGOK's New Industrial Policy and Package of Incentives and Concessions of 1996 (1996 KIP).
4. SGOK's New Industrial Policy and Package of Incentives and Concessions of 2001 (2001 KIP).
5. SGOK's New Industrial Policy and Package of Incentives and Concessions of 2006 (2006 KIP).
D. State Government of Maharashtra Programs (SGOM).
1. Sales Tax Program.
2. Electricity Duty Exemption Under the Package Scheme of Incentives for 1993.
II. Programs Determined Not To Be Used:
A. GOI Programs.
1. Status Certificate Program.
2. Target Plus Scheme (TPS).
3. Export Processing Zones and Export Oriented Units.
4. Export Processing Zones.
5. Income Tax Exemption Scheme (Sections 10A, 10B, and 80HHC).
6. Market Development Assistance.
7. Market Access Initiative.
8. Exemption of Export Credit from Interest Taxes.
9. Long-Term Loans from the GOI.
10. Special Economic Zone Act of 2005.
a. Duty free import/domestic procurement of goods and service for development, operation, and maintenance of SEZ units.
b. Exemption from excise duties on goods (i.e., machinery and capital goods) ''brought from the Domestic Tariff Area'' (defined as the ''whole of India'' excluding SEZs) for use by an enterprise in the SEZ.
c. Drawback on goods brought or services provided from the Domestic Tariff Area into a SEZ, or services provided in a SEZ by service providers located outside India.
d. 100 percent exemption from income taxes on export income from the first 5 years of operation, 50 percent for the next 5 years, and a further 50 percent exemption on export income reinvested in India for an additional 5 years.
e. Exemption from the Central Sales Tax.
f. Exemption from the national Service Tax.
B. State Government of Andhra Pradesh Programs—Grants Under the Industrial Investment Promotion Policy of 2005–2010.
1. 25 percent reimbursement of cost of land in industrial estates and industrial development areas.

2. Reimbursement of power at the rate of Rs. 0.75 ''per unit'' for the period beginning April 1, 2005, through March 31, 2006 and for the four years thereafter to be determined by the Government of Andhra Pradesh (GOAP).
3. 50 percent subsidy for expenses incurred for quality certification up to RS. 100 lakhs.
4. 25 percent subsidy on ''cleaner production measures'' up to Rs. 5 lakhs.
5. 50 percent subsidy on expenses incurred in patent registration, up to Rs. 5 lakhs.
6. 100 percent reimbursement of stamp duty and transfer duty paid for the purchase of land and buildings and the obtaining of financial deeds and mortgages.
7. A grant of 25 percent of the tax paid to GAAP, which is applied as a credit against the tax owed the following year, for a period of five years from the date of commencement of production.
8. Exemption from the GAAP Non-Agricultural Land Assessment (NALA).
9. Provision of ''infrastructure'' for industries located more than 10 kilometers from existing industrial estates or industrial development areas.
10. Guaranteed ''stable prices of municipal water for 3 years for industrial use'' and reservation of 10% of water for industrial use for existing and future projects.

C. State Government of Chhattusgarh Programs—Industrial Policy 2004–2009.

1. A direct subsidy of 35 percent to total capital cost for the project, up to a maximum amount equivalent to the amount of commercial tax/central sales tax paid in a seven year period.
2. A direct subsidy of 40 percent toward total interest paid for a period of 5 years (up to Rs. Lakh per year) on loans and working capital for upgrades in technology.
3. Reimbursement of 50 percent of expenses (up to Rs. 75,000) incurred for quality certification.
4. Reimbursement of 50 percent of expenses (up to 5 lakh) for obtaining patents.
5. Total exemption from electricity duties for a period of 15 years from the date of commencement of commercial production.
6. Exemption from stamp duty on deeds executed for purchase or lease of land and buildings and deeds relating to loans and advances to be taken by the company for a period of three years from the date of registration.
7. Exemption from payment of ''entry tax'' for 7 years (excluding minerals obtained from mining in the state).
8. 50 percent reduction of the service charges for acquisition of private land by Chhattisgarh Industrial Development Corporation for use by the company.
9. Allotment of land in industrial areas at a discount up to 100 percent.

D. State Government of Gujarat Programs.

1. Gujarat Special Economic Zone (SEZ) Act.
   a. Stamp duty and registration fees for land transfers, loan agreements, credit deeds, and mortgages.
   b. Sales tax, purchase tax, and other taxes payable on sales and transactions.
   c. Sales and other state taxes on purchases of inputs (both goods and services) for the SEZ or a Unit within the SEZ.
2. Captive Port Facilities.
   a. Discount on Gujarat wharfage charges.
   b. Credit for the cost of the capital (including interest) to construct the port facilities, which is then applied as an offset to the wharfage charges due Gujarat on cargo shipped through the captive jetty.

E. State Government of Jharkhand Programs.

1. Grants and Tax Exemptions under the State Industrial Policy of 2001.
2. Subsidies for Mega Projects under the JSIP of 2001.

F. State Government of Maharashstra Programs.

1. Refunds of Octroi Under the PSI of 1993, Maharastra Industrial Policy of 2001, and Maharastra Industrial Policy of 2006.
2. Infrastructure Assistance for Mega Projects.
3. Land for Less than Adequate Remuneration.
4. Loan Guarantees Based on Octroi Refunds by the SGM.
5. Investment Subsidy.

III. Total Ad Valorem Rate.

IV. Analysis of Comments.

Essar

Comment 1: Whether The Department Erred In Its Calculation Of Essar's Benefit Under The Government Of Gujarat Value Added Tax Remission Program.

Comment 2: Whether The Department Erred In Converting Dry Metric Tons To Wet Metric Tons In The Calculation Of The Benchmark Used To Measure The Adequacy Of Essar's Purchases Of Iron Ore From The GOI.

Comment 3: Whether The Department Should Use Actual Transaction Prices, Where Available, In Calculating The Benchmark Used To Measure Essar's Benefit Under The Iron Ore Provided For Less Than Adequate Remuneration Program.

Comment 4: Whether The Department Should Adjust The Prices Reported By Essar For Its Purchases Of Iron Ore Lumps And Fines To Exclude Sales Tax Which Is Not Included In The Benchmark Price.

Comment 5: Whether the Department Should Deduct Certain Freight Costs from The Benchmark Used to Measure the Adequacy of Essar's Purchases of Iron Ore from the GOI.

Comment 6: Whether The Failure Of The GOI And The Indian State Governments To Respond To The Department's Questions Warrants Application Of Adverse Facts Available With Respect To Newly Subsidy Programs Essar Claims It Did Not Use.

Comment 7: Whether Essar Adequately Demonstrated Its Non-Use of the Special Economic Zone Act of 2005.

Comment 8: Whether Essar Adequately Demonstrated Its Non-Use of the Gujurat Special Economic Zone Act.

Comment 9: Whether Essar Adequately Demonstrated Its Non-Use of the Captive Port Facilities Program.

Comment 10: Whether Essar Adequately Demonstrated Its Non-Use of the Andhra Pradesh Industrial Policy Program.

Comment 11: Whether Essar Adequately Demonstrated Its Non-Use of the Chhattisgarh Industrial Policy Program.

Comment 12: Whether the Department Erred in Calculating the Benefit on Essar's Pre-Shipment Export Financing.

Ispat

Comment 13: Whether The Department Should Calculate The Benefit Attributable To Ispat's Purchase Of Iron Ore For Less Than Adequate Remuneration From The GOI On An Ex Mines Basis Rather Than An FOB Port Basis.

Comment 14: Whether The Department Erred In Calculating The Benchmark Used To Measure The Adequacy Of Remuneration Of Ispat's Purchases Of High-Grade Iron Ore From The GOI.

Comment 15: Whether The Department Should Adjust The Prices Reported By Ispat For Its Purchases Of Iron Ore Lumps And Fines To Exclude Sales Tax Which Is Not Included In The Benchmark Price.

Comment 16: Whether Ispat's Purchases of Iron Ore from a Private Supplier Are a Valid Benchmark.

Comment 17: Whether to Include Fees in the Calculation of Ispat's Long-Term Benchmark Loan Rates.

Comment 18: Whether the Department Made Clerical Errors In Calculating Ispat's Long-Term Loan Benchmark.

Comment 19: Whether the Department Erred Calculating the Benchmark Used for Ispat Under the EPCGS Program.

Comment 20: Whether the Department Incorrectly Included VAT Refunds in the Benefit Calculation of the State of Maharastra's Sales Tax Program.

Comment 21: Whether the Department Erred by Including Countervailing Duties and Special Additional Duties in the Benefit Calculation of the EPCGS.

Comment 22: Whether the Advance License Program is Countervailable.

Comment 23: Whether The Failure Of The GOI And The Indian State Governments To Respond To The Department's Questions Warrants Application Of Adverse Facts Available With Respect To New Subsidy Programs Ispat Claims It Did Not Use.

Tata

Comment 24: Tata's Ownership Of Captive Mines Of Iron Ore And Coal And Whether The Provision Of Such Minerals Under The Captive Mining Rights Program Constitutes A Financial Contribution Under The Act.

Comment 25: Whether The Provision of Iron Ore and Coal Under the Captive Mining Rights Programs Are Specific Under the Act.

Comment 26: The Benchmark Used to Measure Whether the Captive Mining Rights Programs Imposed by the GOI Provide a Benefit In The Form Of A Provision Of A Good For Less Than Adequate Remuneration.

Comment 27: Whether the Department Should Calculate Separate Benchmarks to Measure the Adequacy of Remuneration of Tata's Purchases of Iron Ore Lumps and Fines under the Captive Mining Rights Program.

Comment 28: Whether the Department should include Ocean Freight in the Coal and

Iron Ore Benchmark Calculation used to measure the adequacy of remuneration of Tata's purchases of Coal and Iron Ore under the Captive Mining Rights Program.

Comment 29: Whether the Department Should Make Adjustments for the Benchmark Prices of Tata Steel's Iron Ore and Coal costs on an equivalent basis.

Comment 30: Whether the TPS Conferred Benefits upon Tata during the POR.

Comment 31: Whether the SDF Constitutes a Financial Contribution.

Comment 32: Calculation of the Benefit to Tata under the EPCGS.

Comment 33: Whether The Department Should Revise The Manner In Which It Conducted The ''0.5'' Percent Test When Calculating The Benefit Attributable To Tata Under The EPCGS.

Comment 34: Attribution of Subsidies Received under the EPCGS.

Comment 35: The Use of Long-Term Prime Lending Rates as Benchmarks.

Comment 36: Whether The Department Should Countervail Tata's Sales Of DFRC Licenses An Untied Subsidy.

JSW

Comment 37: Whether the Department Unlawfully Used AFA Rate for JSW.

Comment 38: Whether Assistance Under The 1993 KIP Is Countervailable.

Comment 39: Whether JSW Purchased High Grade Iron Ore for Less Than Adequate Remuneration.

Comment 40: Whether Loan Guarantees from the GOI Are Countervailable.

Comment 41: Whether JSW Has Captive Mining Rights.

Comment 42: Whether the EPCGS Is Countervailable.

Comment 43: Whether DEPS Is Countervailable.

[FR Doc. E8–15966 Filed 7–11–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XI43

Notice of Availability of Draft Stock Assessment Reports

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: NMFS reviewed the Alaska, Atlantic, and Pacific regional marine mammal stock assessment reports (SARs) in accordance with the Marine Mammal Protection Act (MMPA). SARs for marine mammals in the Alaska, Atlantic, and Pacific regions were revised according to new information. NMFS solicits public comments on draft 2008 SARs.

DATES: Comments must be received by October 14, 2008.

ADDRESSES: The 2008 draft stock assessment reports are available in electronic form via the Internet at *http://www.nmfs.noaa.gov/pr/sars/*.

Copies of the Alaska Regional SARs may be requested from Robyn Angliss, Alaska Fisheries Science Center, NMFS, 7600 Sand Point Way, NE BIN 15700, Seattle, WA 98115–0070.

Copies of the Atlantic and Gulf of Mexico Regional SARs may be requested from Gordon Waring, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543.

Copies of the Pacific Regional SARs may be requested from Jim Carretta, Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92037–1508.

Send comments or requests for copies of reports to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments. Comments may also be sent via facsimile (fax) to 301–427–2526 or via email to *mmsar.2008@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Tom Eagle, Office of Protected Resources, 301–713–2322, ext. 105, e-mail *Tom.Eagle@noaa.gov*; Robyn Angliss 206- 526–4032, e-mail *Robyn.Angliss@noaa.gov*, regarding Alaska regional stock assessments; Gordon Waring, 508–495–2311, e-mail *Gordon.Waring@noaa.gov*, regarding Atlantic regional stock assessments; or Jim Carretta, 858–546–7171, e-mail *Jim.Carretta@noaa.gov*, regarding Pacific regional stock assessments.

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every 3 years for non-strategic stocks. NMFS and the FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups (SRGs), reviewed the status of marine mammal stocks as required and revised reports in the Alaska, Atlantic, and Pacific regions to incorporate new information. NMFS solicits public comments on the draft 2008 SARs.

Alaska Reports

Nineteen reports (15 strategic stocks and four non-strategic stocks) were revised, and 13 reports were not revised. Most revisions included updates of abundance and mortality estimates and did not indicate a change in status of the affected stocks. The Potential Biological Removal (PBR) levels for the following stocks are proposed to be changed to ''undetermined'' because the abundance estimates are based on data that are more than 8 years old: beluga, Beaufort Sea; beluga, E. Chukchi Sea; harbor porpoise, Gulf of Alaska; harbor porpoise, Bering Sea; harbor porpoise, Southeast Alaska; humpback whale, western North Pacific; humpback whale, central North Pacific.

A ''Habitat Concerns'' section was added or substantially updated for all beluga whale stocks with the exception of the Cook Inlet stock, for all harbor porpoise stocks, and for gray whales. As ice-associated species, beluga whales (inhabiting the Bering Seas and farther northward) and gray whales may be vulnerable to loss of sea ice; however, there is insufficient supporting information to predict the types and magnitudes of impacts to these species at this time. As inhabitants of nearshore areas, harbor porpoise may be vulnerable to habitat modifications accompanying urban or industrial development; accordingly, increased development could have localized effects on harbor porpoise abundance or distribution. The gray whale report was updated to incorporate findings from a recent paper that used genetics data to estimate the historical abundance of gray whales in the Pacific Ocean.

Atlantic Reports

Forty-three reports (11 strategic and 32 non-strategic) were revised in the Atlantic region, including all reports for marine mammals in the Gulf of Mexico. Fifteen reports were not revised. Most updates were minor and did not change the status of the affected stocks. NMFS revised the status of beaked whales from strategic to non-strategic due to the absence of observed fishery bycatch in recent years and the lack of confirmed serious injuries or mortalities due to

acoustic trauma as recommended by the SRG. A new report was added this year for the Western North Atlantic stock of rough-toothed dolphins, which is a non-strategic stock.

Extensive revision was made to the report on the Atlantic coastal stocks of bottlenose dolphins. The revisions incorporate new information on structure and migratory pattern, which indicate a second (southern) migratory stock that inhabits waters off the coast of NC and VA in summer and migrates to areas off the coasts of SC to northern FL during winter. The revised report excludes dolphins inhabiting bays, sounds, and estuaries from the coasts and does not contain stock-specific mortality estimates. A separate report for the bay, sound, estuary stocks and stock-specific mortality estimates are expected to appear in revisions for 2009.

Pacific Reports

Revisions for 2008 include 27 Pacific marine mammal stocks under NMFS jurisdiction, including nine ''strategic'' stocks and 18 ''non-strategic'' stocks (see summary table). Thirty-seven reports were not revised. New abundance estimates are available for 20 stocks, including five endangered species of large whales, the Hawaiian monk seal, and southern resident killer whales.

False killer whales in the Hawaii Exclusive Economic Zone (EEZ) have been divided into two separate stocks based upon recent sighting and genetic data indicating that false killer whales within 25–75 nmi of the main Hawaiian Islands are demographically independent of false killer whales further offshore. Accordingly, the 2008 draft SAR recognizes Hawaii pelagic and Hawaii insular stocks within the Hawaii EEZ. As included since the 2007 final SAR, there is a third stock of false killer whales found in the EEZ surrounding Palmyra Atoll. The Hawaii pelagic stock is a strategic stock, and the other two stocks are non-strategic.

The status of one U.S. west coast cetacean stock ('California long-beaked common dolphin') has changed from ''strategic'' to ''non-strategic'', based on new estimates of abundance, a revised PBR, and updates of incidental fishery mortality levels. A SAR for the Eastern Tropical Pacific stock of Bryde's whale will no longer be prepared, as recommended by the Pacific SRG, because whales of this stock rarely enter U.S. waters; however, the SAR for the Hawaiian stock of Bryde's whales will be retained in the 2008 and subsequent reports.

Dated: July 8, 2008.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–15995 Filed 7–11–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 080612761–8762–01]

Draft of the Education Strategic Plan for NOAA: Engaging Educators, Students and the Public To Meet NOAA's Mission Goals

AGENCY: Education Council, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for public comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is revising its Education Strategic Plan (Plan). NOAA recently received broad legislative authority from Congress through the America COMPETES Act to develop, support, promote, and coordinate education activities to enhance public awareness and understanding of the ocean, coastal, Great Lakes, and atmospheric science. The draft Plan establishes goals for NOAA education for the next twenty years as specified by the America COMPETES Act. NOAA encourages all stakeholders and users to review the Plan and provide comments.

DATES: Comments on this draft Plan must be received by 5 p.m. EDT on August 29, 2008.

ADDRESSES: The draft Plan will be available on the following Web site *http://www.oesd.noaa.gov/draft_ed_plan.html*.

Comments should be submitted electronically by e-mailing to *Education.Plan@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Steve Storck, Education Analyst, NOAA Office of Education, Phone: 202–482–2226, e-mail: *Steve.Storck@noaa.gov*.

SUPPLEMENTARY INFORMATION: Throughout its two-hundred year history, the National Oceanic and Atmospheric Administration (NOAA) has imparted scientific knowledge of the Earth's natural systems to benefit society. During this time, education was guided by the vision of leadership, the findings of researchers, the mandates of legislation for programs within NOAA, and to respond to the needs of society.

In 2007, Congress officially recognized the role of education in NOAA with the passage of the *America COMPETES Act* (Pub. L. 110–69). This legislation mandates NOAA to ''conduct, develop, support, promote, and coordinate formal and informal educational activities at all levels to enhance public awareness and understanding of ocean, coastal, Great Lakes, and atmospheric science and stewardship by the general public and other coastal stakeholders, including underrepresented groups in ocean and atmospheric science and policy careers. In conducting those activities, the Administrator shall build upon the educational programs and activities of the agency.

The Administrator, appropriate National Oceanic and Atmospheric Administration programs, ocean atmospheric science and education experts, and interested members of the public shall develop a science education plan setting forth education goals and strategies for the Administration, as well as programmatic actions to carry out such goals and priorities over the next 20 years, and evaluate and update such plan every 5 years.''

In support of these priorities, the legislation provides a mandate for the entire NOAA community to advance education efforts, focus them, coordinate them, and engage a broad community of partners in creating an environmentally literate society and a skilled workforce of scientists, managers and administrators in support of a sustainable economic future.

NOAA is revising its Education Strategic Plan as specified in the America COMPETES Act.

The Plan was developed through a collaborative effort led by educators across NOAA to guide the implementation of this new mandate and to advance the long standing educational mission of the agency.

NOAA welcomes all comments on the content of the draft Plan and requests comments on any inconsistencies perceived within the Plan, and possible omissions of important topics or issues. This draft Plan is being issued for comment only and is not intended for interim use. For any shortcoming noted within the draft Plan, please propose specific remedies. Suggested changes will be incorporated where appropriate, and a final Plan will be posted on the NOAA Web site.

Please follow the format guidance for preparing and submitting comments. Using the format guidance will facilitate the processing of comments and assure that all comments are appropriately considered.

Overview comments should be provided first and should be numbered. Comments that are specific to particular pages, paragraphs or lines of the section should identify the page and line numbers to which they apply. Please number each page of your comments.

Dated: July 8, 2008.

Louisa Koch,

Director of Education, National Oceanic and Atmospheric Administration.

[FR Doc. E8–16039 Filed 7–11–08; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AW83

Atlantic Highly Migratory Species (HMS); Caribbean Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; notice of public scoping meetings.

SUMMARY: NMFS previously published, on May 27, 2008, a notice of intent (NOI) to initiate an amendment to the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), including preparation of an Environmental Impact Statement. NMFS now announces the availability of an issues and options document describing potential measures for inclusion in the proposed Amendment 4 to the Consolidated HMS FMP and provides details for five scoping meetings to discuss and collect comments on the issues described in the issues and options document. Comments received by NMFS on the NOI and issues and options document as well as in the scoping meetings will be used in the development of Amendment 4 to the Consolidated HMS FMP.

DATES: Scoping meetings for Amendment 4 will be held in August and September 2008. See **SUPPLEMENTARY INFORMATION** for meeting dates, times, and locations. Written comments regarding the issues and options document and the May 27, 2008 (73 FR 30381), NOI must be received by October 31, 2008.

ADDRESSES: Scoping meetings will be held in Puerto Rico and the U.S. Virgin Islands (USVI). See **SUPPLEMENTARY INFORMATION** for dates, times, and locations. The issues and options document is available on the HMS website (*http://www.nmfs.noaa.gov/sfa/hms/*).

Written comments should be sent to Greg Fairclough, Highly Migratory Species Management Division, by any of the following methods:

- E–mail: *noi.hms.caribbean@noaa.gov*. Include the following identifier in the subject line: ''NOI HMS Caribbean.''
- Written: 263 13th Avenue South, Saint Petersburg, FL 33701. Please mark the outside of the envelope ''Scoping Comments on Amendment 4 to the Consolidated HMS FMP.''
- Fax: (727) 824–5398.

FOR FURTHER INFORMATION CONTACT: Greg Fairclough at (727) 824 –5399.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act), and the Atlantic tuna, swordfish, and billfish fisheries are managed under the Magnuson–Stevens Act and the Atlantic Tunas Convention Act (ATCA). Management of these species is described in the 2006 Consolidated HMS FMP, which is implemented by regulations at 50 CFR part 635. Copies of the Consolidated HMS FMP are available from NMFS on request (see **FOR FURTHER INFORMATION CONTACT**).

On May 27, 2008 (73 FR 30381), NMFS published an NOI that summarized its rationale for considering modifications to the current HMS permitting and reporting regime in the U.S. Caribbean. As such, NMFS is taking steps to amend current HMS management measures via an FMP amendment. The comment period for the NOI ends on October 31, 2008.

Request for Comments

Five scoping meetings will be held in Puerto Rico and the USVI (see Table 1 for meeting dates, times, and locations) to provide the opportunity for public comment on potential management measures. These comments will be used to assist in the development of the upcoming amendment to the Consolidated HMS FMP. Specifically, NMFS requests comments on the following issues and options: creating a small commercial vessel Caribbean HMS permit (valid for sharks, tunas, and swordfish); combining commercial Caribbean vessel and dealer permits (allowing vessels to sell/retail catch); modifying authorized gears [authorizing buoy gear in the Caribbean bigeye, albacore, yellowfin, and skipjack (BAYS) tuna fishery and allowing the presence of fish traps onboard a fishing vessel when retaining HMS]; and developing methods to improve reporting and data collection. NMFS also requests comments on any other fishery management issue pertaining to Caribbean HMS fisheries that the public believes should be further examined by NMFS.

Comments received on this action will assist NMFS in determining the scope of the EIS and the options for rulemaking to conserve and manage HMS resources and fisheries, consistent with the Magnuson–Stevens Act, ATCA, and the Consolidated HMS FMP.

NMFS also will present an issues and options presentation to the Caribbean, Gulf of Mexico, South Atlantic, Mid–Atlantic, and New England Fishery Management Councils. Please see the Councils' meeting notices for the times and locations of their summer meetings (see *http://www.nmfs.noaa.gov* for Council links). Finally, NMFS also expects to present an issues and options presentation at the fall 2008 HMS Advisory Panel (AP) meeting. The date and location of the HMS AP meeting will be announced in a future **Federal Register** notice.

TABLE 1. DATES, TIMES AND LOCATIONS OF THE SCOPING MEETINGS

Date	Time	Meeting Locations	Address
August 14, 2008	5:30 pm – 7:30 pm	St. Thomas, VI	USVI Department of Planning and Natural Resources, Cyril E. King Airport, Terminal Building, 2nd Floor, St. Thomas, VI 00802
September 8, 2008	3 pm – 5 pm	San Juan, PR	Biblioteca Carnegie, Ave. Ponce de León #7, San Juan, PR 00901–2010

TABLE 1. DATES, TIMES AND LOCATIONS OF THE SCOPING MEETINGS—Continued

Date	Time	Meeting Locations	Address
September 9, 2008	4 pm – 6 pm	Fajardo, PR	Salón Centro de Usos Múltiples de Fajardo, Estacionamiento Municipal, Último Piso, Esquina de Calle Dr. López y Calle Celis Aguilera, Fajardo, PR 00738
September 10, 2008	2 pm – 4 pm	Ponce, PR	Servicio de Extensión Agrícola, 2440 Ave. Las Americas, Ste. 208, Centro Gubernamental, Ponce, PR 00717–2111
September 11, 2008	7 pm – 9 pm	Mayagüez, PR	University of Puerto Rico, Mayagüez Campus, Physics Building, Room 310, Mayagüez, PR 00680

Scoping Meetings Code of Conduct

The public is reminded that NMFS expects participants at the scoping meetings to conduct themselves appropriately. At the beginning of each meeting, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the meeting room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; attendees may not interrupt one another; etc.). The NMFS representative will structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and those that do not will be asked to leave the meeting.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Greg Fairclough (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting.

Dated: July 8, 2008.

Emily H. Menashes

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–15986 Filed 7–11–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ01

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a crab workshop

SUMMARY: The North Pacific Fishery Management Council's (NPFMC) will host a Crab Workshop.

DATES: The meeting will be held on August 11, 2008, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Anchorage Hilton Hotel, 500 West 3rd Avenue, Lupine Room, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Mark Fina, NPFMC; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: A workshop to assist crew in the refinement of proposals for presentation to the crab committee at its September 15th meeting. The workshop is not intended to generate any specific crew consensus or recommendation. Instead, the workshop is intended to assist crew members and their representatives in the drafting of purpose and need statements and reformulation of their proposals as alternatives, elements, and options in a form typically considered by the Council. Crew members and their representatives could then present their revised proposals to the committee for its consideration. The committee report to the Council will include any proposals received and a summary of the committee's discussions of those proposals.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions 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 Act, provided the public has been notified of the NPFMC'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 Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: July 9, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–15892 Filed 7–11–08; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Notice; Agricultural Advisory Committee Meeting

The Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting on Tuesday, July 29, 2008. The meeting will take place in the first floor hearing room of the Commission's Washington, DC headquarters, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 from 9 a.m. to 4 p.m. The agenda is as follows:

I. Convergence and Basis
II. Settlement Prices, Margin Requirement, and Credit
III. Agricultural Swaps
IV. Ongoing Research

The meeting is open to the public. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: Agricultural Advisory Committee, c/o Chairman, Michael V. Dunn, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Chairman Dunn in writing at the foregoing address at least three business days before the

meeting. Reasonable provision will be made, if time permits, for oral presentations of no more than five minutes each in duration.

For further information concerning this meeting, please contact Nicole McNair at (202) 418–5070.

Issued by the Commission in Washington, DC, on July 9, 2008.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E8–16096 Filed 7–11–08; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0088]

Federal Acquisition Regulation; Submission for OMB Review; Travel Costs

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning travel costs. A request for public comments was published at 73 FR 20613 on April 16, 2008. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 13, 2008.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat Division (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0088, Travel Costs, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Edward Chambers, Contract Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 31.205–46, Travel Costs, requires that, except in extraordinary and temporary situations, costs incurred by a contractor for lodging, meals, and incidental expenses shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the per diem rates in effect as of the time of travel as set forth in the Federal Travel Regulations for travel in the conterminous 48 United States, the Joint Travel Regulations, Volume 2, Appendix A, for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States, and the Department of State Standardized Regulations, section 925, ''Maximum Travel Per Diem Allowances for Foreign Areas.'' The burden generated by this coverage is in the form of the contractor preparing a justification whenever a higher actual expense reimbursement method is used.

B. Annual Reporting Burden

Respondents: 5,800.

Responses per Respondent: 10.

Total Responses: 58,000.

Hours per Response: .25.

Total Burden Hours: 14,500.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (VPR), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0088, Travel Costs, in all correspondence.

Dated: July 3, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–15946 Filed 7–11–08; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Board of Actuaries

AGENCY: Department of Defense.

ACTION: Notice of Meeting.

SUMMARY: Under the provision 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 of the Department of Defense Board of Actuaries will take place:

DATES: August 28, 2008 (1 p.m.–5 p.m.) and August 29, 2008 (10 a.m.–1 p.m.).

ADDRESSES: 4040 N. Fairfax Drive, Suite 270, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Inger Pettygrove at the DoD Office of the Actuary, 4040 N. Fairfax Drive, Suite 308, Arlington, VA 22203.

SUPPLEMENTARY INFORMATION: *Purpose of the meeting:* The purpose of the meeting is for the Board to review DoD actuarial methods and assumptions to be used in the valuations of the Education Benefits Fund, the Military Retirement Fund, and the Voluntary Separation Incentive Fund, in accordance with the provisions of Section 183, Section 2006, Chapter 74 (10 U.S.C. 1464 *et seq.*), and Section 1175 of Title 10, United States Code.

Agenda: Education Benefits Fund (August 28, 1 p.m.–5 pm).

Briefing on Investment Experience.

Development in Education Benefits.

Economic Assumptions*.

September 30, 2007 Valuation and Proposed Per Capita and Amortization Costs Reserve Programs*.

September 30, 2007 Valuation and Proposed Per Capita and Amortization Costs Active Duty Programs*.

Military Retirement Fund and Voluntary Separation Incentive Fund (August 29, 10 a.m.–1 p.m.).

Briefing on Retirement Fund Investment Experience.

September 30, 2007, Valuation of the Military Retirement System*.

Methods and Assumptions for September 30, 2008, Valuation*.

Voluntary Separation Incentive (VSI) Fund*.

Recent and Proposed Legislation.

*Board approval required.

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.

Committee's Designated Federal Officer Point of Contact: Persons desiring to attend the Board of Actuaries meeting or make an oral presentation or submit a written statement for consideration at the meeting must notify Inger Pettygrove at 703–696–7413 by August 21, 2008.

Dated: July 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–15921 Filed 7–11–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Department of Defense; Uniformed Services University of the Health Sciences (USUHS).

ACTION: Quarterly Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), this notice announces the following meeting of the Board of Regents of the Uniformed Services University of the Health Sciences.

DATES: Tuesday, August 5, 2008. 8 a.m. to 1 p.m. (Open Session). 1 p.m. to 3 p.m. (Closed Session).

ADDRESSES: Board of Regents Conference Room (D3001), Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Janet S. Taylor, Designated Federal Officer, 4301 Jones Bridge Road, Bethesda, Maryland 20814; telephone 301–295–3066. Ms Taylor can also provide base access procedures.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: Meetings of the Board of Regents assure that USUHS operates in the best traditions of academia. An outside Board is necessary for institutional accreditation.

Agenda: The actions that will take place include the approval of minutes from the Board of Regents Meeting held May 16, 2008; acceptance of administrative reports; approval of faculty appointments and promotions; and the awarding of masters and doctoral degrees in the biomedical sciences and public health. The President, USUHS; Dean, USUHS School of Medicine; Dean, USUHS Graduate School of Nursing; Commander, USUHS Brigade; and the President of the USUHS Faculty Senate will also present reports. These actions are necessary for the University to pursue its mission, which is to provide outstanding health care practitioners and scientists to the uniformed services.

Meeting Accessibility: Pursuant to Federal statute and regulations (5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, most of this meeting is open to the public. Seating is on a first-come basis. The closed portion of this meeting is authorized by 5 U.S.C. 552b(c)(6) as the subject matter involves personal and private observations.

Written Statements: Interested persons may submit a written statement for consideration by the Board of Regents. Individuals submitting a written statement must submit their statement to the Designated Federal Officer at the address detailed above. If such statement is not received at least 10 calendar days prior to the meeting, it may not be provided to or considered by the Board of Regents until its next open meeting. The Designated Federal Officer will review all timely submissions with the Board of Regents Chairman and ensure such submissions are provided to Board of Regents Members before the meeting. After reviewing the written comments, submitters may be invited to orally present their issues during the August 2008 meeting or at a future meeting.

Dated: July 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–16009 Filed 7–11–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0077]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Defense Logistics Agency is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on August 13, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, *ATTN:* DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

Dated: July 7, 2008.

Patricia Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

S400.60 CA

SYSTEM NAME:

DLA Guest Lodging Files (November 16, 2004, 69 FR 67112).

REASON:

DLA guest lodging facilities no longer exist. Records have been destroyed.

[FR Doc. E8–15927 Filed 7–11–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0076]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice To Amend Four Systems of Records.

SUMMARY: The Defense Logistics Agency is amending four systems of records notices to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on August 13, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, *ATTN:* DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended,

have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

S100.70

SYSTEM NAME:

Invention Disclosure (February 6, 2004, 69 FR 5841).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''S170.01.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete from entry ''Social Security Number (SSN), address, and telephone number.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 4502, General provisions; 10 U.S.C. 2320, Rights in technical data; 15 U.S.C. 3710b, Rewards for scientific, engineering, and technical personnel of Federal agencies; 15 U.S.C. 3711, Employee Technology Award Program; 35 U.S.C., Chapter 17, Secrecy of Certain Inventions and Filing Applications in Foreign Country; and E.O. 10096, Inventions Made by Government Employees, as amended by E.O. 10930.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records maintain by the HQ DLA Office of Counsel are destroyed 26 years after file is closed. Records maintained by the DLA Field Activities Offices of Counsel where patent applications are not prepared are destroyed 7 years after closure.''

* * * * *

RECORD ACCESS PROCEDURES:

Delete from entry ''For personal visits, each individual shall provide acceptable identification, e.g., driver's license or identification card.''

* * * * *

S170.01

SYSTEM NAME:

Invention Disclosure.

SYSTEM LOCATION:

Office of General Counsel, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221 and the General Counsel Offices at the Defense Logistics Agency Field Activities. Mailing addresses may be obtained from the System manager below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and military personnel assigned to DLA who have submitted invention disclosures to DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inventor's name; descriptions of inventions; designs or drawings, as appropriate; evaluations of patentability; recommendations for employee awards; licensing documents; and similar records. Where patent protection is pursued by DLA, the file may also contain copies of applications, Letters Patent, and related materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 4502, General provisions; 10 U.S.C. 2320, Rights in technical data; 15 U.S.C. 3710b, Rewards for scientific, engineering, and technical personnel of Federal agencies; 15 U.S.C. 3711, Employee Technology Award Program; 35 U.S.C., Chapter 17, Secrecy of Certain Inventions and Filing Applications in Foreign Country; and E.O. 10096, Inventions Made by Government Employees, as amended by E.O. 10930.

PURPOSE(S):

Data is maintained for making determinations regarding and recording DLA interest in the acquisition of patents, for documenting the patent process, and for documenting any rights of the inventor. The records may also be used in conjunction with the employee award program, where appropriate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Patent and Trademark Office for use in processing applications and performing related functions and responsibilities under Title 35 of the U.S. Code.

To foreign government patent offices for the purpose of securing foreign patent rights.

Information may be referred to other government agencies or to non-government agencies or to non-government personnel (including contractors or prospective contractors) having an identified interest in a particular invention and the Government's rights therein.

The DOD ''Blanket Routine Uses'' also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be maintained on paper and electronic storage media.

RETRIEVABILITY:

Records are retrieved by the names of inventors.

SAFEGUARDS:

Access is limited to those individuals who require the records for the performance of their official duties. Paper records are maintained in buildings with controlled or monitored access. During non-duty hours, records are secured in locked or guarded buildings, locked offices, or guarded cabinets. The electronic records systems employ user identification and password or smart card technology protocols.

RETENTION AND DISPOSAL:

Records maintain by the HQ DLA Office of Counsel are destroyed 26 years after file is closed. Records maintained by the DLA Field Activities Offices of Counsel where patent applications are not prepared are destroyed 7 years after closure.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Headquarters, Defense Logistics Agency, *ATTN:* DG, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should include the individual's full name, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should include the individual's full name, current address and telephone number.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Inventors, reviewers, evaluators, officials of U.S. and foreign patent offices, and other persons having a direct interest in the file.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S100.71

SYSTEM NAME:

Royalties (February 2, 2004, 69 FR 4930).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''S170.02.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Individual's name and address, reports from DLA procurement centers of patent royalties submitted pursuant to Defense Acquisition Regulation (DAR) forwarded to Defense Logistics Agency Headquarters, Office of General Counsel for approval, and included in pricing of respective contracts.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 2304, Contracts: Competition requirements; 10 U.S.C. 2320, Rights in technical data; 10 U.S.C. 2511, Defense dual-use critical technology program; 15 U.S.C. 3710b, Rewards to scientific, engineering, and technical personnel of Federal agencies; and DOD Directive 5535.3, DOD Domestic Technology Transfer (T2) Program; Federal Acquisition Regulation Part 27, Patents, Data, and Copyrights and DFARS Part 227, Patents, Data, and Copyrights.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Documents concerning contractor royalty reports and refund or adjustment of reported royalties are destroyed 10 years after closure.''

* * * * *

S170.02

SYSTEM NAME:

Royalties.

SYSTEM LOCATION:

Office of General Counsel, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221 and the General Counsel Offices at the Defense Logistics Agency Field Activities. Mailing addresses may be obtained from the System manager below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and firms to which patent royalties are paid by Defense Logistics Agency contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name and address, reports from DLA procurement centers of patent royalties submitted pursuant to Defense Acquisition Regulation (DAR) forwarded to Defense Logistics Agency Headquarters, Office of General Counsel for approval, and included in pricing of respective contracts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2304, Contracts: Competition requirements; 10 U.S.C. 2320, Rights in technical data; 10 U.S.C. 2511, Defense dual-use critical technology program; 15 U.S.C. 3710b, Rewards to scientific, engineering, and technical personnel of Federal agencies; and DOD Directive 5535.3, DoD Domestic Technology Transfer (T2) Program; Federal Acquisition Regulation Part 27, Patents, Data, and Copyrights and DFARS Part 227, Patents, Data, and Copyrights.

PURPOSE(S):

Data is maintained to document the review and approval of patent royalties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be referred to other government agencies or to non-government personnel (including contractors or prospective contractors) having an identified interest in the allowance of royalties on DLA contracts.

The DOD ''Blanket Routine Uses'' also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be maintained on paper and electronic storage media.

RETRIEVABILITY:

Records are retrieved the names of inventors and patent owners.

SAFEGUARDS:

Access is limited to those individuals who require the records for the performance of their official duties. Paper records are maintained in buildings with controlled or monitored access. During non-duty hours, records are secured in locked or guarded buildings, locked offices, or guarded cabinets. The electronic records systems employ user identification and password or smart card technology protocols.

RETENTION AND DISPOSAL:

Documents concerning contractor royalty reports and refund or adjustment of reported royalties are destroyed 10 years after closure.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, current address and telephone numbers.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, current address and telephone numbers.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

DLA General Counsel's investigation of published and unpublished records and files both within and without the government, consultation with government and non-Government personnel, information from other Government agencies and information submitted by Government officials or other persons having a direct interest in the subject matter of the file.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S100.72

SYSTEM NAME:

Patent Licenses and Assignments (February 25, 2004, 69 FR 8631).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''S170.03.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Documents concerning licensing and assignment arrangements for use of patents owned by non-governmental organizations or individuals, including clearances to procure licenses or assignments; and consisting of correspondence on license negotiations, requests for clearance, license agreements, reports submitted under the terms of the license, and similar papers are destroyed 26 years after closure.''

* * * * *

RECORD ACCESS PROCEDURES:

Delete from entry ''For personal visits, each individual shall provide acceptable identification, e.g., driver's license or identification card.''

* * * * *

S170.03

SYSTEM NAME:

Patent Licenses and Assignments.

SYSTEM LOCATION:

Office of General Counsel, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221 and the General Counsel Offices at the Defense Logistics Agency Field Activities. Mailing addresses may be obtained from the System manager below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and firms which have granted patent licenses or assignments to DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files including patent license and assignment agreements and accounting records indicating basis for Government payment of royalties during life of agreements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2386, Copyrights, patents, designs, etc.; acquisition; 10 U.S.C. 2515, Office of Technology Transition; 35 U.S.C. 202, Disposition of rights; DFARS Subpart 227.70, Infringement Claims, Licenses, and Assignments; DOD Directive 5535.3, DoD Domestic Technology Transfer (T2).

PURPOSE(S):

Data is maintained for the acquisition and administration of patent license and assignment agreements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be referred to other Government agencies or to non-Government personnel (including contractors or prospective contractors) having an identified interest in the potential or actual infringement of particular patents.

The DOD ''Blanket Routine Uses'' also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be maintained on paper and electronic storage media.

RETRIEVABILITY:

Records are retrieved by the name of individual or firm granting rights.

SAFEGUARDS:

Access is limited to those individuals who require the records for the performance of their official duties. Paper records are maintained in buildings with controlled or monitored access. During non-duty hours, records are secured in locked or guarded buildings, locked offices, or locked cabinets. The electronic records systems employ user identification and password or smart card technology protocols.

RETENTION AND DISPOSAL:

Documents concerning licensing and assignment arrangements for use of patents owned by non-governmental organizations or individuals, including clearances to procure licenses or assignments; and consisting of correspondence on license negotiations, requests for clearance, license agreements, reports submitted under the terms of the license, and similar papers are destroyed 26 years after closure.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, current address and telephone numbers.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, current address and telephone numbers.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

DLA General Counsel's investigation of published and unpublished records and files both within and without the government, consultation with government and non-government personnel, information from other government agencies and information submitted by Government officials or other persons having a direct interest in the subject matter of the file.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S100.50 DLA–GC

SYSTEM NAME:

Fraud and Irregularities (November 16, 1993, 58 FR 60428).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''S170.04.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; Pub. L. 95–521, Ethics in Government Act; and DOD Directive 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.''

* * * * *

S170.04

SYSTEM NAME:

Fraud and Irregularities.

SYSTEM LOCATION:

Office of General Counsel, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221 and the General Counsel Offices at the Defense Logistics Agency Field Activities. Mailing addresses may be obtained from the System manager below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual or group of individuals or other entity involved in or suspected of being involved in any fraud, criminal conduct or antitrust violation relating to DLA procurement, property disposal, or contract administration, or other DLA activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative reports, complaints, pleadings and other court documents, litigation reports, working papers, documentary and physical evidence, contractor suspensions and debarments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; Public Law 95–521, Ethics in Government Act; and DOD Directive 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

PURPOSE(S):

Information is used in the investigation and prosecution of criminal or civil actions involving fraud, criminal conduct and antitrust violations and is used in determinations to suspend or debar individuals or other entities from DLA procurement and sales.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DOD ''Blanket Routine Uses'' also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be maintained on paper and electronic storage media.

RETRIEVABILITY:

Records are retrieved alphabetically by the name of the subject individual or other entity.

SAFEGUARDS:

Records, as well as computer terminals, are maintained in areas accessible only to DLA personnel. In addition, access to and retrieval for computerized files is limited to authorized users and is password protected.

RETENTION AND DISPOSAL:

Records are destroyed six years after all aspects of the case are closed.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221 and the General Counsel at the Defense Logistics Agency Field Activity.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 144, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Federal, state and local investigative agencies; other federal agencies; DLA employees; and individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information, except to the extent that disclosure would reveal the identify of a confidential source. **Note**: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and is published at 32 CFR part 323. For more information, contact the system manager.

[FR Doc. E8–15931 Filed 7–11–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0020]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of Records.

SUMMARY: The Department of the Army is proposing to amend a system of records in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on August 13, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Dickerson at (703) 428–6513.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 8, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0027–50 DAJA

SYSTEM NAME:

Foreign Jurisdiction Case Files (February 22, 1993, 58 FR 10002).

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with ''Office of the Judge Advocate General, Headquarters, Department of the Army, International and Operational Law Division, Washington, DC 20310–2210. (Copy of record will exist for shorter periods in Office of the Staff Judge Advocate at the command where case originated.)''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Members of the U.S. Army; civilians employed by, serving with, or accompanying the U.S. Army abroad; and dependents of such individuals who have been subject to the exercise of civil or criminal jurisdiction by foreign courts or foreign administrative agencies and/or sentenced to unsuspended confinement.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013; Department of Defense Directive 5525.1; Army Regulation 27–50, Status of Forces Policies, Procedures, and Information; and E.O. 9397 (SSN).''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Delete second paragraph ''Information from this system of records may be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a secure controlled area and are accessible only to authorized personnel. Physical and electronic access is restricted to designated individuals having a need therefore in the performance of official duties. Buildings are equipped with alarms, cameras, and monitored continuously.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Permanent. Keep in CFA until no longer needed for conducting business, then retire to Records Holding Area/Army Electronic Archives (RHA/AEA). The RHA/AEA will transfer to the National Archives when record is 20 years old.''

* * * * *

A0027–50 DAJA

SYSTEM NAME:

Foreign Jurisdiction Case Files.

SYSTEM LOCATION:

Office of the Judge Advocate General, Headquarters, Department of the Army, International and Operational Law Division, Washington, DC 20310–2210. (Copy of record will exist for shorter periods in Office of the Staff Judge Advocate at the command where case originated.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Army; civilians employed by, serving with, or accompanying the U.S. Army abroad; and dependents of such individuals who have been subject to the exercise of civil or criminal jurisdiction by foreign courts or foreign administrative agencies and/or sentenced to unsuspended confinement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual case reports concerning the exercise of jurisdiction by foreign tribunals, trial observer reports, requests for provision of counsel, records of trials, requests for local authorities to refrain from exercising their jurisdiction; communications with other lawyers, officials within the Department of the Army and/or Defense, diplomatic missions; other selected relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013; Department of Defense Directive 5525.1; Army Regulation 27–50, Status of Forces Policies, Procedures, and Information; and E.O. 9397 (SSN).

PURPOSE(S):

To monitor development and status of each individual case to ensure that all rights and protection to which U.S. personnel abroad and their dependents are entitled under pertinent international agreements are accorded such personnel; to obtain information to answer queries regarding the status and disposition of individual cases involving the exercise of civil or criminal jurisdiction by foreign courts or foreign administrative agencies to render management and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in a secure controlled area and are accessible only to authorized personnel. Physical and electronic access is restricted to designated individuals having a need therefore in the performance of official duties. Buildings are equipped with alarms, cameras, and monitored continuously.

RETENTION AND DISPOSAL:

Permanent. Keep in CFA until no longer needed for conducting business, then retire to Records Holding Area/Army Electronic Archives (RHA/AEA). The RHA/AEA will transfer to the National Archives when record is 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to either the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210 or the Staff Judge Advocate of the installation or Command where legal assistance was sought. Official mailing addresses can be obtained by writing the system manager.

Individual should provide full name, current address and telephone number or case number and office symbol appearing on official correspondence concerning the matter, any other identifying information and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to either the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210 or the Staff Judge Advocate of the installation or Command where legal assistance was sought. Official mailing addresses can be obtained by writing the system manager.

Individual should provide full name, current address and telephone number, case number or office symbol appearing on official correspondence concerning the matter, any other identifying information and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her attorney, foreign government agencies, Department of State, law enforcement jurisdictions, relevant Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–15929 Filed 7–11–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0019]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Delete a System of Records.

SUMMARY: The Department of the Army is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 13, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

Dated: July 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0190–30 DAMO

SYSTEM NAME:

Military Police Investigator Certification Files (February 22, 1993, 58 FR 10002).

DELETION:

Commanders can no longer certify personnel to perform military police investigations. The military police investigations regulation requires all personnel performing investigations to be trained at the U.S. Army Military Police School at Fort Leonard Wood, Missouri.

[FR Doc. E8–15930 Filed 7–11–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy. U.S. Navy Case Number 98,480 entitled ''Relay Brick and Deployer'', Inventors Burmeister, Pezeshkian and Nguyen, Filed May 1, 2007.//Navy Case Number 98,795 entitled ''Relay Device Deployer System'', Inventors Burmeister, Pezeshkian and Nguyen, Filed August 1, 2007.

ADDRESSES: Requests for data and inventor interviews should be directed to Joan Singel telephone: 406–994–7705, *wusingel@montana.edu,* TechLink, 900 Technology Blvd., Suite A, Bozeman, MT 59718. TechLink is an authorized DoD partnership intermediary. Requests should be made prior to August 1, 2008.

FOR FURTHER INFORMATION CONTACT: Stephen H. Lieberman, PhD, Office of

Research and Technology Applications, Space and Naval Warfare Systems Center, Code 73120, 53560 Hull St, Room 2306, San Diego, CA 92152–5001, *telephone:* 619–553–2778, *e-mail: stephen.lieberman@navy.mil.*

SUPPLEMENTARY INFORMATION: The U.S. Navy intends to move expeditiously to license these patents. Licensing application packages are available from TechLink and all applications and commercialization plans must be returned to TechLink by September 19, 2008. Additional information and revisions may be requested by TechLink through September 30, 2008. TechLink will then turn over all completed applications to the U.S. Navy for evaluation and patent licensing award selection.

The Navy intends to insure that its licensed inventions are broadly commercialized throughout the United States.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: July 8, 2008.

T.M. Cruz,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–15944 Filed 7–11–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Open Meeting of the Ocean Research and Resources Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Ocean Research and Resources Advisory Panel (ORRAP) will meet to discuss National Ocean Research Leadership Council (NORLC) and Interagency Committee on Ocean Science and Resource Management Integration (ICOSRMI) activities. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Monday, August 4, 2008 from 8:30 a.m. to 5:30 p.m. and Tuesday, August 5, 2008 from 8:30 a.m. to 2:45 p.m. In order to maintain the meeting time schedule, members of the public will be limited in their time to speak to the Panel. Members of the public should submit their comments one week in advance of the meeting to the meeting Point of Contact.

ADDRESSES: The meeting will be held at NorthWest Research Associates, 4118 148th Avenue, NE., Redmond, WA 98052.

FOR FURTHER INFORMATION CONTACT: Dr. Charles L. Vincent, Office of Naval Research, 875 North Randolph Street Suite 1425, Arlington, VA 22203–1995, telephone (703) 696–4118.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The meeting will include discussions on ocean research to applications, ocean observing, professional certification programs, and other current issues in the ocean science and resource management communities.

Dated: July 7, 2008.

T.M. Cruz,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–15925 Filed 7–11–08; 8:45 am]

BILLING CODE 3810–FF–P

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** material changes to the HAVA State plan previously submitted by Colorado.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual State at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the fifty States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates. EAC has not previously published an update to the Colorado State plan.

The submission from Colorado addresses material changes in the State budget of its previously submitted State plan and, in accordance with HAVA section 254(a)(12), provides information on how the State succeeded in carrying out its previous State plan. The amendment specifically focuses on using fiscal year 2008 requirements payments received by Colorado toward the costs of implementing the computerized statewide voter registration system required by HAVA Section 303. Specifically, Colorado will utilize the new funding to provide technical field support for election officials in every county of the state on the use of the new statewide voter registration system.

Upon the expiration of thirty days from August 13, 2008, Colorado will be eligible to implement the material changes addressed in the plan that is published herein, in accordance with HAVA section 254(a)(11)(C).

EAC notes that the plan published herein has already met the notice and comment requirements of HAVA section 256, as required by HAVA section 254(a)(11)(B). EAC wishes to acknowledge the effort that went into revising this State plan and encourages further public comment, in writing, to the State election official listed below.

Chief State Election Official

Colorado

Honorable Mike Coffman, Secretary of State, 1700 Broadway, Suite 270, Denver, CO 80290, Phone: (303) 894–2200 (Select ''3'' for the Elections Division), E-mail: *sos.elections@sos.state.co.us.*

Thank you for your interest in improving the voting process in America.

Dated: July 2, 2008.

Rosemary Rodriguez,

Chair, U.S. Election Assistance Commission.

BILLING CODE 6820–KF–P

State of Colorado

Help America Vote Act Revised State Plan

March 12, 2007
In Accordance with
The federal "Help America Vote Act of 2002"
("HAVA")

UPDATED MARCH 6, 2008

2

The mission of the Department of State is to serve the public by performing constitutional and statutory duties of collecting, securing, and communicating information, ensuring the integrity of elections, and enhancing commerce.

3

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STATE OF COLORADO
Department of State
1700 Broadway, Suite 270
Denver, CO 80290

Mike Coffman
Secretary of State

March 12, 2007

My Fellow Coloradoans,

Since the passage of the Help America Vote Act of 2002, Colorado Election Officials have devoted themselves to the successful implementation of the State Plan. This ongoing implementation has required cooperation and support from our General Assembly and the active participation of community stakeholders.

It has been a challenge and a privilege to be involved in the implementation of a project of this magnitude. This update is a living document that has evolved and will continue to be a working plan of action. Through its implementation, this plan continues to empower Colorado voters to voice their electoral preference in an environment that ensures the independence and integrity of their vote.

The following pages provide an update of Colorado's commitment to the empowerment of its voters that melds integrity with accessibility and self-determination.

Mike Coffman

Executive Summary

Colorado was fortunate to have over 90 citizen stakeholders and local election officials participate in the shaping of its electoral future through the original Help America Vote Act State Plan. This valuable input continues to shape the voting environment in the form of advisory and blue ribbon panels.

Provisional voting was adopted by the Colorado legislature in 2000. In 2002, Colorado expanded the voting rights of active military personnel serving overseas. In 2003, Colorado expanded the law further to extend to all absent uniformed services electors, their spouses and children, and all overseas citizens, their spouses and children. Finally, in 2003, Colorado passed H.B. 03-1356, also known as the Colorado Help America Vote Act. This bill addressed the remaining federal HAVA requirements regarding local funding and authority. In 2005, through HB-05-206, the General Assembly passed legislation requiring a state certification program for Colorado's local election officials. Also, in compliance with HAVA, Colorado all punch card voting systems in Colorado were replaced by August 2006.

Colorado has used and will continue to use the requirements payments to address the requirements identified under the Help America Vote Act. These requirements include, but not limited to:

- Voting standards, including auditing, accessibility, error rates and uniform definitions.
- Provisional voting and voting information
- Statewide voter registration system, including mail registration
- Other activities to improve the administration of elections, including training and outreach

The Secretary of State will centrally manage activities funded by requirements payments. The Secretary of State will be accountable for all expenditures, funding levels, program controls and outcomes. In order to ensure a uniform and non-discriminatory approach, all affected stakeholders must have input into the process. The Secretary of State has worked and will continue to work with local election officials to create needs assessment instruments to assist in determining the appropriate level of support for local activities.

The Secretary of State will continue to reach out to its electorate, election staff and local election officials with an effective program of election education and outreach. Through a curriculum of election law, process and Election Day administration the Office of the Secretary of State has provided local election officials and their staff members with a certification program that can be completed within a two-year period.

Colorado requested and was granted a waiver to implement a statewide database of all registered voters by January 2006 rather than January 2004. A competitive selection process led to a contract with Accenture LLP that commenced in August 2004. Ultimately the effort was unsuccessful and the Colorado Secretary of State and Accenture mutually agreed to terminate the agreement in December 2005. Colorado has regularly corresponded with the U.S. Department of Justice since that time as a reformulation of the state's strategy has proceeded. The Secretary of State's office has worked closely with Colorado counties, the Department of Justice and other Colorado agencies on two main efforts: implementing interim practices to allow verification of

eligibility of Colorado registered voters pursuant to HAVA requirements; and, moving ahead with a plan to achieve full compliance with respect to the statewide database. At the current time, Colorado is actively engaged with a reputable, successful partner with proven experience in statewide voter databases and anticipates full statewide implementation of a system by April 2008.

With regard to voting guidelines and processes, all voting systems in Colorado will have met the error rate standards established under Section 3.2.1 of the Voting Systems Standards issued by the Federal Elections Commission. Election Officials have diligently worked to ensure that at least one Direct Recording Electronic voting system that meets the standards for accessibility for voters with special needs is in each polling place in the State. In addition, Colorado requires each county to have its integrated voting system tested and our certification does meet the requirements of the National Institute of Standards and Technology certification program, HAVA 2002 and state election code.

In addressing fund management, H.B. 03-1356 established the "Federal Elections Assistance Fund". All federal funds received by the State pursuant to HAVA 2002 have been deposited into this Fund, along with state and county monies appropriated for the purpose of meeting the State's 5% match requirement. The Fund is administered by the Secretary of State in accordance with the financial controls and accounting standards required by Colorado and federal law. The Office of the Secretary of State received $43.4 million of federal funding.

The State maintains state expenditures for activities funded by the requirements payment at a level at or above the expenditure level that existed prior to the receipt of federal funds. Colorado's HAVA enabling legislation establishes requirements that exceed the maintenance of effort required by HAVA 2002.

Colorado understands that accurate measurement and tracking of performance goals is paramount in achieving a successful implementation of HAVA. Performance goals provide a high-level view of a project's direction. The State's goal is to achieve election reform and compliance with HAVA requirements through the successful implementation of the programs outlined in Section 8 of the State Plan.

Uniform and nondiscriminatory complaint procedures are an important aspect of HAVA 2002. The Secretary of State has developed a unified statewide complaint system process for tracking and managing alleged violations of Title III of HAVA. The State addresses the complaint procedures by breaking down the tasks into the following sections:

- Submission Process
- Review Process
- Alternative Dispute Resolution
- Forms
- Manuals
- Resolution Process
- HAVA Timelines

In addressing Title I of HAVA 2002, Colorado received $7 million. These funds are split between activities listed in §101, totaling $4.9 million, and §102, totaling $2.1 million.

Colorado has used, and will continue to use the State Plan as the basis for managing the activities necessary for the implementation of HAVA requirements. The Secretary of State, with guidance from advisory committees as may be needed from time to time, will be responsible for the management and continued implementation of the State Plan.

March 2008 Update:

The Omnibus Appropriations Act for FY 2008 (P.L. 110-161) includes additional funds to help states improve the administration of Federal elections. The appropriation for the State of Colorado is $1,695,344, and in order to receive the funds, the State is required to amend its State Plan as follows:

- *How the State will use the requirements payment to meet the requirements of Title III or to carry out other activities to improve the administration of Federal elections;*
- *How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in (a);*
- *How the State will provide voter education, election official education, and poll worker training programs to assist the State in meeting the requirements of Title III;*
- *The State's proposed budget for new activities being described in the plan;*
- *How the State will continue to meet its Maintenance of Effort (MOE) requirement;*
- *How the State will adopt performance goals and measures that will be used by the State and units of local government in carrying out the plan;*
- *A description of how Title I funds affect the new activities proposed to be carried out under the plan, including the amount of Title I funds available for such activities;*
- *How the State will conduct ongoing management of the plan;*
- *A description of how this amended State plan reflects change from the previous State plan and how the State succeeded in carrying out the previous State plan;*
- *A description of the committee which participated in the development of the State plan update.*

The updates in this Revised State Plan address these requirements.

State Advisory Committees

A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section 255 and section 256.
-- HAVA §254 (a)(13)

Colorado was fortunate to have a very active group of over 90 citizens interested in shaping its electoral future through the State HAVA Committee including members of the U.S. Senate. Locally, stakeholders in the election, legislative, information technology (I.T.), political, legal, minority, accessibility and military communities sat on both the main advisory committee and, in some cases, either chaired or sat on working sub-committees. The main advisory and working sub-committees also included members of the media and educational communities. Stakeholders from state government were included to ensure the request for proposal included all the components necessary to implement the required network solutions of the statewide voter registration system.

In the future, these and other board and panel members may continue serve from time to time in an advisory capacity to the Secretary of State. Currently, for example, an ongoing advisory board is assisting with the development of curriculum for the certification of local election officials.

March 2008 Update:

HAVA Advisory Committee

Upon notice that additional HAVA requirements payments were available for states, in accordance with Section 255 of HAVA, the Secretary of State appointed an advisory committee to participate in the update of the State Plan. The committee members included the following:

The County Clerk and Recorder from each of these counties:
Denver, El Paso, Gilpin, Jefferson, and Rio Blanco

Representatives from the Legal Center for Persons with Disabilities and Older People and the League of Women Voters

Staff from the Office of the Secretary of State

The committee convened on February 21, 2008. Since the Plan was updated less than a year ago, and the State had met all the requirements of Title II except the implementation of the statewide voter registration system, the committee focused on the possible uses of the additional funds. They unanimously agreed that the success of the statewide voter registration system in the 2008 elections is critical, and that the additional requirements payment would best be utilized to provide additional support to the counties in the implementation of the new system.

Current Elections Environment in Colorado

Provisional Ballots

Prior to the adoption of the Help America Vote Act of 2002, Colorado had in place many of the provisions required by the Act. Provisional voting was adopted by the State of Colorado in 2001, prior to the 2002 General Election. Since the adoption of the federal act, Colorado passed several bills bringing the state into compliance with the requirements of the federal act.

In 2002, Colorado adopted H.B. 02-1307, also known as the Blue Ribbon Election Bill. This act provided for provisional ballots for any voter who claimed to be properly registered but whose qualification to vote could not be immediately established. This act also allowed individuals who applied for an absentee ballot to vote a provisional ballot at the polling place if they chose not to vote the absentee ballot. In 2003, Colorado adopted H.B. 03-1006 that removed the option to vote a provisional ballot for those electors who had applied for an absentee ballot. After a challenge in court in 2004 the law was amended by SB05-206 to allow voters who apply for an absentee ballot but spoil their ballot or otherwise does not cast it, to allow the voter to cast a provisional ballot at the polling place, vote center or early voting site if the elector affirms that they have not and will not cast the absentee ballot. The provisional ballot is counted if the designated election official verifies that the elector is registered to vote, eligible to vote and did not cast the absentee ballot. Furthermore, in 2006 the General Assembly passed HB06-1198 which states that if an elector casts a provisional ballot at a polling place in a precinct other than the precinct in which the elector is registered but within the elector's county of residence, the elector's votes for federal and statewide offices and statewide ballot issues and ballot questions shall be counted.

Each voter who votes a provisional ballot may determine whether the ballot was counted by contacting the Clerk & Recorder either by phone or in the case of an available website, online.

Uniformed and Overseas Civilian Absentee Voting Act (OUCAVA)

In 2002, Colorado expanded the voting rights of active military personnel serving overseas by allowing a ballot to be faxed to the active military voter and the voted ballot faxed back to the designated election official. In 2003, Colorado expanded the law further to extend this voting option to all absent uniformed services electors, their spouses and children, and all overseas citizens, their spouses and children with the adoption of H.B. 03-1271. This bill also accomplishes the following:

- Designates the Office of the Secretary of State as the designated office responsible for providing information on voter registration and absentee ballot procedures to be used by absent uniformed services electors, nonresident overseas electors, and resident overseas electors who wish to register to vote or vote in any jurisdiction in Colorado;
- Directs the Secretary of State to cooperate with the voting assistance officer of any unit of the armed forces to assist with voter registration and absentee ballot applications; and

- Prohibits a designated or coordinated election official from refusing to accept or process any otherwise valid absentee ballot submitted by an absent uniformed services elector during a year on the grounds that the elector submitted the application before the first date on which the designated or coordinated election official otherwise accepts or processes such applications for that year.

In 2006, Colorado adopted SB06-062, which further expanded the voting rights of active military personnel. The bill added a provision to Colorado law to allow for military personnel deployed outside the United States to receive and return their ballot by electronic mail. The office of the Secretary of State worked closely with the Department of Defense, Federal Voting Assistance Program to establish procedures to implement the new law in time for the 2006 General Election.

Administrative Complaint Procedures

In 2003, Colorado adopted H.B. 03-1356, also known as the Colorado Help America Vote Act. This bill designated the Secretary of State as the chief state election officer within the meaning of HAVA 2002 and granted to the Secretary the power of coordinating the responsibilities of the State of Colorado under HAVA 2002. The act authorizes the Secretary to establish a uniform administrative complaint procedure to remedy grievances arising under Title III of HAVA 2002. It created a federal elections assistance fund in the state treasury and specifies that the Secretary of State administer the fund. The act creates a permanent funding mechanism that specifies the sources and types of moneys to be deposited into the fund, and requires that any moneys received by the state from the federal government pursuant to HAVA 2002 to be used by the state only for the purposes specified by the provisions of HAVA 2002. In addition, the act provides for a continuous appropriation of all moneys in the fund.

The Colorado Help America Vote Act also provides for the following:

- Authorizes the Secretary to direct that moneys in the Secretary of State cash fund be appropriated for carrying out the activities for which federal payments are being made in an amount equal to 5% of the total amount to be spent for such activities;
- Requires each eligible elector to be asked for his or her driver's license number if one has been issued, if not, his or her identification number issued by the Colorado Department of Revenue, or if neither have been issued, the last 4 digits of the elector's social security number. If an individual has not been issued a current and valid driver's license or a social security number, the state will assign the applicant a unique identification number to serve as identification of the applicant for voter registration purposes; and
- Requires the Secretary to implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive, computerized statewide voter registration system, defined, maintained and administered at the state level. Like most states, Colorado has a centralized voter registration master list; however, it is currently maintained and administered at the county level. The act also authorizes the Secretary to electronically cancel the registration of deceased persons and persons convicted of a felony. Colorado does not require the formal restoration of voting rights of felons who have served their sentence as a prerequisite to register to vote; those rights are automatically restored at that time, thus allowing such an individual to register to vote.

As previously stated, Colorado adopted H.B. 02-1307 in 2002, which provided for the sharing of information between the State and Department of Revenue in the collection of information on residence addresses and signatures, including the driver's license database, motor vehicle registration database, motorists' insurance database and the state income tax information systems. The adoption of H.B. 03-1356 in 2003 also addresses the following:

- Requires the Secretary and the executive director of the Department of Revenue to match information in the database of the centralized statewide registration system with information in the database of the motor vehicle business group to the extent required to enable each department to verify the accuracy of the information provided on applications for voter registration in conformity with the requirements of HAVA 2002;
- Requires the executive director of the Department of Revenue to enter into an agreement with the federal commissioner of Social Security for the purpose of verifying applicable information in accordance with the requirements of HAVA 2002. It further requires the secretary to implement adequate technological security measures to prevent the unauthorized access to the computerized statewide voter registration list;
- Requires the questions: "Are you a citizen of the United States?" and "Will you be 18 years or older on Election Day?" with boxes for the applicant to indicate his or her responses to these questions on the voter registration form. It also requires the form to include a statement informing the applicant that, if the form is submitted by mail and the applicant is registering to vote for the first time, the appropriate information required is to be submitted with the mail-in registration form to avoid the additional identification requirements for applicants voting for the first time. If the applicant fails to answer on the mail registration form the question relating to American citizenship, the election official is to notify the applicant of the failure. In addition, the election official is to provide the applicant with an opportunity to complete the form in a timely manner to allow for completion of the registration form prior to the next election for federal office; and
- Allows any new voter who desires to cast his or her ballot in person, by absentee ballot, or mail ballot, but does not satisfy these identification requirements to cast a provisional ballot. In addition, it also requires the designated election official to include with a mail or an absentee ballot written instructions to enable a first-time voter to comply with the requirements for new voters intending to cast a mail or absentee ballot. Finally, the bill directs state and local election officials to implement the requirements applicable to new voters in a uniform and nondiscriminatory manner.

Prior to the adoption of HAVA, Colorado was at the forefront of states allowing provisional ballots, extending of voting opportunities for military personnel and overseas citizens, and providing for the exchange of information between the Office of the Secretary of State and the Department of Revenue on driver's license address and signature information. With the adoption of H.B. 03-1006, H.B. 03-1356 and H.B. 03-1271, SB06-062 and SB06-170 Colorado's election laws remain some of the most progressive in the United States. Furthermore, these acts bring the state into compliance with the requirements of the federal Act.

Section 1 - Use of Requirements Payments for Title III

How the State will use the requirements payment to meet the requirements of Title III, and, if applicable under section 251(b)(2), to carry out other activities to improve the administration of elections. --HAVA §254 (a)(1)

Colorado has used and will continue to use the requirements payments to address the following requirements identified under Title III:

- §301 Voting Systems Standards
- §302 Provisional Voting and Voting Information Requirements
- §303 Computerized Statewide Voter Registration List Requirements and Requirements for Voters Who Register by Mail
- §304 Minimum Requirements
- §305 Methods of Implementation Left to Discretion of State
- §311 Adoption of Voluntary Guidance by Commission
- §312 Process for Adoption
- §251(b) (2) – Other Activities

§301 Voting Systems Standards

Deadline for compliance: 01/01/06

Audit Capacity

All integrated voting systems in the State of Colorado are required to go through a re-certification process by the State. All such integrated systems shall meet the manual audit requirements set out in Section 301(2), including a permanent paper record with a manual audit capacity, an opportunity for the voter to change the ballot or correct any error before the permanent paper record is produced and the availability of the paper record as an official record for any recount conducted with respect to any election in which the integrated system is used.

Accessibility

In an effort to improve voter accessibility in the State of Colorado, the Secretary of State established a Voting Accessibility and Outreach Sub-committee. This sub-committee met frequently to assess Colorado's accessibility issues and recommended improvements, and assisted in the development of a polling place accessibility survey. The committee worked diligently with the Secretary of State to insure that the intent of the Help America Vote Act of 2002 is met and that every polling place in the State of Colorado is fully accessible to voters with disabilities, the elderly, and voters with language or literacy barriers. The Voting Accessibility and Outreach Sub-committee developed the following mission statement that outlines both principles and goals of voting accessibility in the State of Colorado:

> ***All voters are entitled to the right of full participation in elections and the political process and to the privilege of casting their votes privately and independently.***
>
> ***Polling places and the voting process will be accessible to all voters, including voters with physical or mental disabilities and voters with language and literacy***

barriers. People with such disabilities or barriers who are knowledgeable about accessibility issues should be included in determining the accessibility of polling places, access to the voting process, and training and procedures for accessibility. No eligible voter will be denied the right to vote because he or she has a physical or mental disability or because he or she has a language or literacy barrier. A combination of technology and creative problem solving should work together to ensure private and independent access to the electoral process for all voters.

Election judges will receive training in voting accessibility including common courtesies and procedures for accommodating the needs for all voters.

State and local election officials should implement outreach programs to inform voters about the availability of accessible polling places and voting equipment, and should provide individuals with information in an accessible format to inform voters about the use of accessible equipment.

Information provided about candidates or other election matters that is made available to the general public in print, electronically, or by other means should be provided in alternative formats accessible to people with disabilities and to people with language or literacy barriers. Voter registration shall be conducted in a uniform and non-discriminatory manner.

The State of Colorado received grant funds totaling $580,984 from the Department of Health and Human Services under four separate awards to address accessibility issues.

County Clerks and Recorders (i.e., designated county election officials) are required to survey each polling place in their respective counties for accessibility, using the Department of Justice ADA Checklist for Polling Places. To date, polling places in Colorado have been surveyed at least once, and some were surveyed twice because the original survey was conducted using a different format or counties have chosen to go to the Vote Center format. Some counties enlisted the assistance of disabled individuals in their communities to help them determine the accessibility of the polling places. To assist counties in conducting surveys, the Department purchased Accessibility Survey Tool Kits and distributed them to all County Clerks and Recorders. These kits contain a number of tools to measure slopes, doorways, thresholds, etc. for building ingress and egress.

To date, the Department has initiated three rounds of sub-grants to counties to make accessibility modifications to polling places based on the surveys, including modifications in the path of travel, entrances, exits, and within the voting areas themselves. Awards totaling $279,930.32 have been made to counties, with grants ranging from $760.00 to $41,940.24; the counties provided a match to these funds of approximately 15%. Modifications to the polling places ranged from the purchase of ramps and removal of barriers to making curb cuts and providing concrete access paths. To facilitate the opportunity of privacy and independence in voting, several counties purchased accessible voting booths for their polling places; funds were also used to inform the disabled voter about voting, voting rights, voting locations, etc.

In February 2005, the Department hosted a successful two-day demonstration of accessible voting equipment at the State Capitol for legislators, election officials and members from all segments of the disability community. Over 100 disabled voters participated in the demonstrations, providing feedback on the usability of the equipment that was shared with both the vendors and elections officials. The event was viewed as an important step toward having accessible voting systems in the state by 2006.

To satisfy the requirements payments under Title 3 of the Help America Vote Act, the Voting Accessibility and Outreach Sub-committee focused on four distinct categories:

- The placement of at least one DRE voting machine per polling place.
- The development and posting of signs in each polling place to assist voters with special needs.
- The development and distribution of forms to assist all voters and election judges in the voting process.
- Developing a working relationship with the Disability Community and Advocacy Groups.

HAVA Compliant Direct Recording Electronic (DRE) Voting Equipment

The State of Colorado had at least one DRE in every polling place by the August 2006 primary election. The voting system standards outlined in Section 4 of this State Plan were used in the assessment and selection of the DREs. Members of the disability community, senior citizens, and voters with language or literacy barriers were involved in voting equipment fairs and provided surveys to assist state certification technicians in the testing and state certification of these machines.

Under Colorado law, the selection and implementation of the DREs was left to the discretion of each individual county. Consequently, some counties chose to meet the requirement by placing only one DRE in each polling place, while other counties chose to purchase sufficient DRE equipment to conduct elections in their county exclusively on accessible voting equipment.

Signs for Visually Impaired Voters

As recommended by the Voting Accessibility and Outreach subcommittee, all polling place signs required by Section 302 (b) of HAVA 2002 have been presented in large font for those voters with special visual needs. Additional voter information materials will be provided to voters with special needs upon request.

Forms to Assist All Voters and Election Judges

The Secretary of State's office has developed a statewide, best practices guide to assist election judges. All forms used in the polling place have been designed to ensure that the voting experience is uniform and consistent throughout the state. The State has also developed a Student Election Judges program to reach out to students 16 and 17 years of age in an effort to educate and encourage them to participate in the election process.

Alternative Language Accessibility

Forms produced by the Office of the Secretary of State have been printed in English and Spanish and are available to every county. In addition, the State of Colorado has two counties containing large populations of Native American citizens. These citizens speak the Navajo and Ute languages, which are unwritten. Local election officials work with Native American citizens to record audiotapes that contain the same information as any posted signs, forms, and ballot styles. At the request of the voter, special accommodations will be provided.

Error Rates

Colorado requires each integrated voting system to be re-certified by the state. The re-certification ensures that all integrated systems meet the error rates standards established under Section 3.2.1 of the Voting Systems Standards issued by the Federal Election Commission.

Uniform Definition of What Constitutes a Vote

In August 2002, the State of Colorado formally adopted Rule 27, Rules Concerning Uniform Ballot Counting Standards. These rules outline those criteria that constitute a vote for each type of voting system in use in the State of Colorado. For a detailed description, please refer to Section 4 of this plan.

March 2008 Update:

Through February 2008, the Department had received $899,568 in grants from the Department of Health and Human Services to address accessibility issues in polling places. Awards totaling $522,479 have been sub-granted to counties to assist them in making accessibility modifications as well as to inform disabled voters about voting, voting rights, voting locations, etc.

§302 Provisional Voting and Voting Information Requirements

Deadline for compliance: 01/01/04

HAVA 2002 requires provisional voting procedures in all states to ensure that no voter, who desires to vote, is disenfranchised. Provisional ballots were put into use by the State of Colorado prior to the passage of HAVA 2002. In 2002, the State of Colorado addressed this important issue—the Colorado General Assembly enacted provisional voting legislation (codified at §1-9-301, et seq., Colorado Revised Statutes). In response to the passage of HAVA 2002, the General Assembly of Colorado passed conforming legislation in 2003. The following table (Table-1.1) provides information on provisional voting in Colorado.

Table-1.1

PROVISIONAL VOTING REQUIREMENTS	CURRENTLY MET	CHANGE REQUIRED	COMMENTS
(1) Notify individuals they may cast a provisional ballot.	X		§1-9-301, C.R.S.
(2) Permitted to cast a provisional ballot upon the execution of a written affirmation stating the individual is— (A) A registered voter in the jurisdiction (B) Eligible to vote in that election.	X		§1-9-304.5, C.R.S.
(3) An election official shall transmit a ballot to an appropriate official for verification.	X		§1-9-303, C.R.S.
(4) If the election official determines the individual is eligible the provisional ballot shall be counted.	X		§1-9-303, C.R.S.
(5) Individual who cast a provisional ballot will be able to ascertain (A) Whether the vote was counted, or (B) The reason the vote was not counted.	X		§1-9-306, C.R.S.,
(6) Establish a free access system that allows (A) Individuals who cast a provisional ballot to discover whether the ballot was counted. (B) If the vote was not counted, the reason the vote was not counted. (C) Access to the information shall be restricted to the individual.	X		§1-9-306, C.R.S.
(7) Voters who vote after the polls close (after the scheduled voting time) (A) As a result of a Federal or State court order or any other order extending the time for established for closing the polls in effect 10 days before the date of that election (B) Vote only by casting a provisional vote.	X		§1-1.5-104, C.R.S. No statutory provision; however, the Secretary of State is statutorily authorized to exercise such powers and perform such duties as reasonably necessary to ensure that the State is compliant with all requirements of HAVA 2002.

§303 Computerized Statewide Voter Registration List Requirements and Requirements for Voters Who Register by Mail

Deadline for compliance: 01/01/04, waiver to 01/01/06 available

Currently, Colorado does not have a uniform statewide voter registration system in place. In August 2004, Colorado contracted with a vendor to provide a statewide voter registration system, but the contract was terminated in December 2005. Colorado entered into a contract with Saber Software, Inc who is developing the system which is expected to be fully implemented in the spring of 2008.

Prior to the adoption of H.B. 03-1356, each county was allowed by statute to purchase and maintain its own voter registration system. Each county, on a monthly basis, provides the Secretary of State with a master list of voters for the county. The master lists of all sixty-four (64) counties are then combined to create a statewide master voter registration list. With the passage of H.B. 03-1356, a uniform, official, centralized, interactive, computerized statewide voter registration system that is defined, maintained and administered at the state level will be implemented.

In compliance with HAVA 2002, Colorado will use the Requirements Payments from Title III to continue the focused initiative to implement a statewide voter registration system. This project will reside in the Office of the Secretary of State. The Project Manager will report directly to the Department of State Chief Information Officer.

A detailed master project work plan has been developed to manage and track tasks, milestones, timeframes and resources throughout the entire life cycle of the project.

Through an extensive analysis, needs assessment, and requirements definition, Colorado has determined that a "top-down" database strategy is the best strategy for Colorado. The baseline HAVA requirements, from Section 303, are listed below in Table 1.2. Requirements Payments will be used to address all of these requirements, in addition to requirements that are identified throughout the process.

Table-1.2

HAVA SECTION	REQUIREMENT
IMPLEMENTATION	
§ 303 (a)(1)(B)(i)	The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State
§ 303 (a)(1)(B)(ii)	The computerized list contains the name and registration information of every legally registered voter in the State
§ 303 (a)(1)(B)(iii)	Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.
§ 303 (a)(1)(B)(iv)	The computerized list shall be coordinated with other agency databases within the State.
§ 303 (a)(1)(B)(v)	Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list. *For Colorado, "Local election official" means county election official.*
§ 303 (a)(1)(B)(vi)	All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.
§ 303 (a)(1)(B)(vii)	The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).
§ 303 (a)(1)(B)(viii)	The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.
COMPUTERIZED LIST MAINTENANCE	
§ 303 (a)(2)(A)(i)	If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), including subsections (a)(4), (c)(2), (d), and (e) of section 8 of such Act (42 U.S.C. 1973gg–6).
§ 303 (a)(2)(A)(ii)	For purposes of removing names of ineligible voters from the official list of eligible voters— (I) under section 8(a)(3)(B) of such Act (42 U.S.C. 1973gg–6(a)(3)(B)), the State shall coordinate the computerized list with State agency records on felony status; and (II) by reason of the death of the registrant under section 8(a)(4)(A) of such Act (42 U.S.C. 1973gg–6(a)(4)(A)), the State shall coordinate the computerized list with State agency records on death.
§ 303 (a)(2)(A)(iii)	Notwithstanding the preceding provisions of this subparagraph, if a State is described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–2(b)), that State shall remove the names of ineligible voters from the computerized list in accordance with State law.
§ 303 (a)(2)(B)(i)	the name of each registered voter appears in the computerized list
§ 303 (a)(2)(B)(ii)	only voters who are not registered or who are not eligible to vote are removed from the computerized list
§ 303 (a)(2)(B)(iii)	duplicate names are eliminated from the computerized list
TECHNOLOGICAL SECURITY OF COMPUTERIZED LIST	
§ 303 (a)(3)	The appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.
MINIMUM STANDARD FOR ACCURACY OF STATE VOTER REGISTRATION RECORDS	
§ 303 (a)(4)(A)	A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.
§ 303 (a)(4)(B)	Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.
VERIFICATION OF VOTER REGISTRATION INFORMATION	
§ 303 (a)(5)(A)(i)	Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes— (I) in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or (II) in the case of any other applicant (other than an applicant to whom clause (ii) applies), the last 4 digits of the applicant's social security number.
§ 303 (a)(5)(A)(ii)	If an applicant for voter registration for an election for Federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number, which will serve to identify the applicant for voter registration purposes. To the extent that the State has a computerized list in effect under this subsection and the list assigns unique identifying numbers to registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.

HAVA SECTION	REQUIREMENT
§ 303 (a)(5)(A)(iii)	The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.
§ 303 (a)(5)(B)(i)	The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.
§ 303 (a)(5)(B)(ii)	The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under section 205(r)(8) of the Social Security Act (as added by subparagraph (C)).
§ 303 (a)(5)(C)(i)	The Commissioner of Social Security shall, upon the request of the official responsible for a State driver's license agency pursuant to the Help America Vote Act of 2002— "(i) enter into an agreement with such official for the purpose of verifying applicable information, so long as the requirements of subparagraphs (A) and (B) of paragraph (3) are met; and "(ii) include in such agreement safeguards to assure the maintenance of the confidentiality of any applicable information disclosed and procedures to permit such agency to use the applicable information for the purpose of maintaining its records. "(B) Information provided pursuant to an agreement under this paragraph shall be provided at such time, in such place, and in such manner as the Commissioner determines appropriate. "(C) The Commissioner shall develop methods to verify the accuracy of information provided by the agency with respect to applications for voter registration, for whom the last 4 digits of a social security number are provided instead of a driver's license number.
OTHER REQUIREMENTS BEYOND HAVA 2002	
N/A	Establish a county user group to help derive the registration management requirements for the new system
N/A	Conversion strategy / design from current county systems to new statewide system

Mail Registration System

With the adoption of H.B. 03-1356 and SB06-170, Colorado statutes now mirror the requirements for electors who register by mail found in HAVA. Counties began tracking registrants on January 1, 2003 who registered by mail and failed to submit acceptable identification. Information is forwarded to these registrants informing them of the need to provide the additional required information. Because Colorado did not have a computerized statewide voter registration system at the time of passage of HAVA 2002, first time voters who register by mail and failed to provide acceptable identification will be required to present (where voting in person) or submitting with the ballot (where voting by mail) current and valid identification as defined by §1-1-104 (19.5), Colorado Revised Statutes, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

Voter registration forms have been revised to reflect the new requirements regarding the citizenship of the applicant and the age of the applicant. Extensive voter education campaigns have been and will continue to be conducted through a cooperative effort between the state and the counties to inform voters that if they did not provide this information when registering, the information will be required when they go to vote or when they return their absentee or mail ballot.

§304 Minimum Requirements

Section 304 of HAVA 2002 mandates that the requirements of Title III are minimum standards and that the state may establish election technology and administration requirements that are more strict than HAVA 2002 as long as the state requirements are not inconsistent with federal law. The laws and rules of the state of Colorado also fully comply with all HAVA requirements and with the relevant laws listed in HAVA 2002 §906.

§305 Methods of Implementation Left to Discretion of State

The State understands that the choice of methods used to comply with HAVA 2002 is left to the discretion of the State. Colorado recognizes this responsibility and has imposed disciplined practices to ensure a successful program.

§311 Adoption of Voluntary Guidance by Commission

The State will consider the recommendations made by the Election Assistance Commission (EAC) in their document "Voluntary Guidance on Implementation of Statewide Voter Registration Lists" published July 2005. The State will incorporate those recommendations deemed appropriate for Colorado.

§312 Process for Adoption

The State is aware of the adoption of the "Voluntary Guidance on Implementation of Statewide Voter Registration Lists" published by the Election Assistance Commission (EAC) in July 2005.

§251(b) (2) – Other Activities

Pending fund availability and all Title III requirements having been met, the State intends to use requirements payments to continue to fund other activities to improve the administration of elections, including, but not limited to:

- establishing a polling place accessibility program to ensure that all polling places in the state are and continue to be Americans with Disabilities Act (ADA) compliant;
- providing necessary assistance to persons with limited proficiency in the English language;
- engaging in a variety of voter education and outreach activities including public service announcements, voting machine demonstrations, mass mailings and other related media avenues;
- providing election official and election judge training initiatives; and
- providing continuing education of local election officials for certification programs.

March 2008 Update:

Colorado plans to use the additional $1,695,344 requirements payment toward the costs of implementing the required computerized statewide voter registration system which will be fully deployed in the state in April 2008. Specifically, the State will use these additional funds to provide additional technical field support for election officials in every county in the state on the use of the new statewide voter registration system.

Each of the 64 counties in the state has been maintaining its own voter registration system, each month providing the Secretary of State's office a list of its voters. The lists from all counties combine to create a statewide master list (but not a list that satisfies the requirements of HAVA). The new statewide voter registration system will replace this process and will be used in the 2008 elections.

In August 2007, the Department began to pilot the new voter registration system in 9 of the 64 counties; training on the use of the system was provided for election officials and their staffs in those pilot counties. Subsequently, training was begun for the remaining counties and is continuing at the time of this update. All counties will have had initial training by the end of March 2008.

It has become apparent to the Department that for the new statewide system to be successful, more one-on-one training, site visits and technical support for the county users of the new system are necessary. With the additional HAVA funds, the Department will contract with Saber Software, Inc., the developer of the system, to provide a team of technical experts who will give on-site training and business process support to any county in the state who needs it when the system is deployed, continuing this support beyond the 2008 General Election. This type of technical support was not in the original plan for the development of the system but has been determined to be critical to the success in using the system.

Section 2 – Distribution and Monitoring of Requirements Payments

How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1) including a description of --

(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

-- HAVA §254 (a) (2)

The Colorado Help America Vote Act granted broad authority of the Secretary of State who is accountable for all expenditures, funding levels, program controls and outcomes. The Secretary may exercise such powers and perform such duties as reasonably necessary to ensure that the state is compliant with all requirements pursuant to HAVA 2002 to be eligible on a timely basis for all federal funds made available to the state under HAVA 2002, including, without limitation, the power and duty to:

- develop and require education and training programs and related services for state, county, and local election officials involved in the conduct of elections;
- promulgate rules in accordance with the state administrative procedures act as the Secretary finds necessary for the proper administration, implementation, and enforcement of HAVA 2002 and of the state HAVA laws and:
- approve an appropriate level of financial support of local activities related to HAVA requirements.

In anticipation of distributing HAVA funds to counties in support of local election-related activities, the State outline in its State Plan the criteria for evaluation and determination of eligibility, monitoring of expenditures, and requirements of the recipients of the funds. However, because the state received nearly $10 million less in federal HAVA funds than expected, the State realigned its priorities for use of the funds. In late 2005, the Secretary decided to distribute funds to counties only for the purposes of assisting them in the acquisition of HAVA-compliant voting systems prior to the 2006 federal election.

The original budget to assist counties with the purchase of at least one accessible voting system in each polling place was $7.8 million. However, since many counties had to replace entire voting systems in order to comply with this HAVA requirement and their funds were limited, the State chose to distribute over $15.1 to the counties to assist them with the lease/purchase of the equipment.

- A plan for the allocation of funds per county was developed by the State, using a formula that considered the number of pilling places in a county, number of voters, and whether or not the county needed to replace decertified optical scan equipment; this assured an equitable allocation of funds to each county;
- An intergovernmental agreement between the State and each county was created and signed by both parties; this agreement assured county compliance with HAVA requirements and met State fiscal rules for disbursement of funds;
- Each county negotiated a contract with the vendor of choice and sent a copy of the contract to the Secretary of State office for review and approval before the contract was finalized; this assured the counties were purchasing/leasing only certified voting equipment;
- Upon receipt of the equipment and an itemized invoice from the vendor, the county submitted a copy of the invoice to the State, who then disbursed funds according to the allocation for the county; this assured that the county was eligible to receive the funds from the State.

The State has no immediate plans to disburse additional HAVA funds to the counties in support of their election activities. However, when the intergovernmental agreement was developed for each county for the acquisition of HAVA-compliant voting systems, the State made the performance period of the agreement five years (through 2012) in the event funds would become available for future disbursements.

March 2008 Update:

The State does not plan to distribute the additional requirements payment to counties in order to carry out the activities described above. The State will contract directly with the vendor, Saber Software, Inc. and will disburse the funds using sound financial principles.

Section 3 – Education and Training

How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III.
-- HAVA §254(a) (3)

The human component of voting, filling out that ballot and casting that vote is the sum total of a centuries old Constitutional right of self-determination. Election Day is the result of months of training and preparation. While technology has enhanced this process with safeguards to protect the secrecy and integrity of the process, whether by polling place, absentee ballot or mail ballot, an election still requires state and local teamwork to accomplish that one important goal, a seemingly effortless election. As a result of HAVA direction and funding, the Secretary of State continues to reach out to its electorate, election staff and local election officials with an effective program of election education and outreach.

Through a curriculum of election law, process and Election Day administration the Office of the Secretary of State has provided local election officials and their staff members with a certification program that can be completed within a two-year period. In a broad partnership, the Secretary of State has integrated staff, guest speakers, peers in the election process, and consultants into the curriculum. Programs have been divided into regional training seminars utilizing local accommodations or educational facilities when possible. Certification of local election officials and their staff members requires completion of course work and hands on training. Funds spent by local election officials are considered as criteria for local matching funds for HAVA purposes.

The greatest challenge in Election Day administration can be the hiring and training of Election Day judges. Colorado is fortunate to have had in place the Student Election Judges Program, which allows high school students to work as election judges alongside their senior counterparts on Election Day. This partnership has been a great success in providing the seasoned judge with the technical aptitude of a younger generation who has literally grown up with computers. The student judges are equally pleased for the chance to participate in the election process, be paid for their time and learn the history of past elections. Local election officials have utilized this program to bring students into the electoral process by serving as election judges.

The State recognizes the need for additional recruitment tools for encouraging participation in the election process. Ideas currently under review include not only more effective ways of recruiting judges from the political parties but also investigating ways to engage the private sector, higher education, community groups, Ad Councils and service organizations.

Once recruited, the Secretary of State regards the training of these Election Day workers as a critical issue. The Secretary of State continues to investigate the incorporation of a combination

of training methods and performance measures to determine the most effective method of training.

Voter outreach is a critical part of the implementation of this particular phase of HAVA 2002. HAVA 2002 is much more than a new variation of an old theme. Centralized election administration, voter registration, complaint processes, provisional ballots and accessibility give Colorado voters' greater autonomy and responsibility. It also provides the Secretary of State the challenge of relating these changes in formats that reach potential voters with divergent educational, language and accessibility issues.

Part of the outreach program includes our stakeholders working with media and "talking" groups within the community, political organizations, the press, schools etc. to communicate these changes. The Secretary of State has utilized a multitude of media options in the method of voter education. Marketing techniques have included but not been limited to radio, print and advertising public information pieces to students, alumni, and attendees of local university sporting events.

Section 4 – Voting System Guidelines and Processes

How the State will adopt voting system guidelines and processes, which are consistent with the requirements of section 301.
-- HAVA §254 (a) (4)

Since June 1, 1991, the State of Colorado has required all voting systems, voting machines, electronic voting devices, punch cards and non-punch card electronic voting systems to meet the standards promulgated by the Federal Election Commission. Recognized independent testing authorities have the statutory authority to test, approve and qualify electronic voting systems for sale and use in the State of Colorado if certain criteria are met.

Those criteria include the following:

- Any independent testing authority will be recognized and granted the authority to qualify electronic voting systems for use in Colorado only when it has met all of the obligations and ongoing requirements necessary to gain certification as an independent testing authority from the National Association of State Election Directors (NASED) or other national authority recognized by the Federal Election Commission (FEC) for the purpose of certifying independent testing authorities.
- The independent testing authority conducts any and all tests required by NASED or other national authority recognized by the FEC for granting certification to independent testing authorities to verify the integrity of the electronic voting systems to be used in Colorado.
- Prior to the use of any electronic voting devices or electronic voting systems in any public election in Colorado, such devices must be certified by the Secretary of State following a successful qualification testing conducted by a recognized independent testing authority.

Section 231(a)(2) of the HAVA 2002 allows the states the option to provide for the testing, certification, de-certification or re-certification of its voting system hardware and software by the laboratories accredited by the Election Assistance Commission. Colorado requires certification of all integrated voting systems in use in the State of Colorado. Historically, Colorado has certified individual voting systems. However, with the definition of "system" found in HAVA 2002, the integration of all systems in each county in the State of Colorado has to be tested. Therefore, Colorado requires each county to have its integrated voting system tested and certified as meeting the requirements of HAVA 2002 and state election code.

Existing voting systems in the State of Colorado are required to meet the standards set out in Section 301 of the Help America Vote Act of 2002. The voting system standards include the following:

- Permits the voter to verify in a private and independent manner the votes selected by the voter on the ballot before the ballot is cast and counted;
- Provides the voter with the opportunity, in a private and independent manner, to change the ballot or correct any error before the ballot is cast and counted; and
- Notification to the voter of any over votes, the effect of the over vote and the opportunity to correct. In central count optical scan counties; this will be achieved through extensive voter education of the standards, including instructions to the voter at the polling place.

All voting systems in Colorado meet the error rate standards established under Section 3.2.1 of the Voting Systems Standards issued by the FEC, a manual audit capacity, a permanent paper record for recount purposes, and the opportunity for the voter to change the ballot or correct any error before the permanent paper record is produced. Furthermore, each polling place now has at least 1 DRE voting system that meets the standards for accessibility for voters with special needs.

In August 2002, the State of Colorado formally adopted Rule 27, Rules Concerning Uniform Ballot Counting Standards. These rules outline those criteria that constitute a vote for each type of voting system in use in the State of Colorado. These rules were formulated with the assistance of voting system vendors, county clerks and recorders acting as the chief local election officials, their staffs, the Secretary of State, and the Elections Division staff of the Office of the Secretary of State. A copy is attached as *Appendix A - Rule 27: Rules Concerning Uniform Ballot Counting Standards*. These rules define terms and outline what constitutes a vote for paper ballots, central count optical scan, and precinct count optical scan voting systems. As of August 2006, all Colorado counties have replaced punch card voting systems with certified voting systems. Criteria for what constitutes a vote for DREs would not be applicable.

In 2005, the Secretary of State promulgated Rule 45, Concerning Voting System Standards for Certification, to further clarify and the certification process for the local election officials and the vendor. In March 2006, the Secretary of State adopted a major revision to the Rule.

Section 5 – Fund Management

How the State will establish a fund described in subsection (b) for purposes of administering the State's activities under this part, including information on fund management.
-- HAVA §254 (a) (5)

Prior to the enactment of state enabling legislation, a separate HAVA fund was first established administratively by the Secretary of State and the State Controller. The State's initial payment of Title I monies was then deposited into this fund. Subsequently, a fund was established statutorily by the State HAVA enabling legislation (House Bill 03-1356), which establishes the fund as the "Federal Elections Assistance Fund".[1]

Pursuant to the new legislation, all federal funds received by the State pursuant to HAVA 2002 are deposited into the Fund, along with state and county monies appropriated for the purpose of meeting the State's 5% match requirement. In addition, net interest earned by the State Treasurer from the investment of Fund monies will be credited to the Fund.

All federal funds received by the State pursuant to HAVA 2002 have been deposited into the Fund, along with state monies appropriated for the purpose of meeting the State's 5% match requirement. In addition, interest earned on the funds has been credited to the Fund by funding source, i.e., Title 1, Title 11, State Match, etc…, and used according to the purpose of the source.

March 2008 Update:

All federal funds received by the State pursuant to HAVA 2002 were deposited into the fund, including interest earned on the federal funds. In 2003, the General Assembly appropriated $1,371,270 in cash funds, which were deposited into the Fund and earned interest, to use toward meeting the 5% match required by HAVA to receive the Title II funds. The General Assembly further authorized the Secretary of State to use moneys in the Department's cash fund to satisfy the difference needed to meet the state match requirement. At the time, the 5% match was calculated at $1,813,632. However, in 2006 the EAC provided a formula for calculating the match, which when applied to the Title II funds received by the State, resulted in a higher match requirement of $1,818,177.

The Department has met and exceeded the $1,818,177 match requirements, expending over $2 million of state cash funds on HAVA requirements, particularly on the development of the computerized statewide voter registration system. The Department will request a new appropriation by the General Assembly in the amount of $89,229 to fulfill the 5% match requirement in order to receive the additional requirements payment of $1,695,344 and will deposit such appropriation into the Fund.

The Fund continues to be administered in accordance with the financial controls and accounting standards required by Colorado and federal laws.

Section 6 – Budget

The State's proposed budget in the State Plan submitted in July 2003 was based on (1) the receipt of an estimated $52.3 million dollars in federal funds over a three-year period and, (2) a

broad estimate of costs and activities necessary to meet the mandates of HAVA. Since Colorado, like other states, did not receive a full award of HAVA appropriated funds, the budget originally submitted has been modified to reflect the actual level of funding.
Colorado received a total of $41.6 million in federal funding in 2003 and 2004 – 20% less than was appropriated under the Help America Vote Act. The funds received by Colorado were as follows:

FY 2003	Title I - Section 101	$ 4,860,301
FY 2003	Title I - Section 102	$ 2,177,095
FY 2004	Title II	$34,545,365
	Total	$41,582,761

In addition, the State matched the Title II funds in the amount of $1,813,632. To date, the amount of state and federal funds that have been available for the HAVA program totals $43,396,393. It is estimated that approximately $5.7 million in interest will be earned over a ten year period. The State estimates the use of at least $48,857,000 on HAVA-related activities for the period 2003 through 2012. Remaining funds, as well as any additional funds the State might receive, are expected to continue to support improvements in the administration of federal elections through at least the year 2013.

Revised HAVA Budget – March 2007

Following is a revised budget as of March 2007 that includes actual expenditures through 2006. Several factors contributed to this revision: reduced level of federal funding to states; change in vendors for development of a computerized statewide voter registration system; and changes in priorities for use of the HAVA funds based on state needs. This includes an increased distribution (above 2003 projections) to counties for the purchase of HAVA-compliant accessible voting systems.

HAVA Budget – 2003-2012			
	Estimated/Actual Costs	Duration	Comments
Section 102 Funds:			
Replacement of Punch Card Voting Systems in 5 counties in the State	$ 2,323,852	April 2003 through August 2006	Section 102 Funds and interest distributed to all five counties who replace punch card systems prior to August 2006.
Section 101, Title II, State Match Funds, and Earned Interest:			
Section 301 Compliant Voting Systems for counties in the State, including accessible systems	$15,178,955	March 2006 – July 2012	Through February 2007, $12.5 million of the obligated amount had been distributed to the counties.
Centralized Statewide Voting Registration System	$19,561,000	January 2003 – July 2012	Costs include hardware, software, IV&V, Project Management, Training, on-going support and maintenance, as well as miscellaneous expenses to implement and maintain system through July 2011.
Voter Outreach and Education; Training of Election Officials	$ 383,000	July 2003 – July 2012	Includes expenditures related to Provisional Voting, Voter Information Requirements, and training on complaint procedures.
State Budget and Fiscal Controls; Election Reform Program Management	$ 7,772,000	January 2003 – July 2012	Includes administrative costs to manage the HAVA Program.
Remaining Funds	$ 3,638,193		
Total	**$48,857,000**		

March 2008 Update:

The estimated amount to provide technical field support between April 2008 and March 2009 to the election officials and staff who will be responsible for using the new computerized statewide voter registration system is $1,925,000. The State will use the additional Title III funds of $1.695 million toward those costs.

The proposed budget in the State Plan submitted in July 2003 was based on (1) the receipt of an estimated $52.3 million dollars in federal funds over a three-year period and, (2) a broad estimate of costs and activities necessary to meet the mandates of HAVA. Since Colorado, like other states, did not receive a full award of HAVA appropriated funds, the original budget was modified to reflect the actual level of funding. The State's budget presented in the March 2007 Revised State plan reflected changes through the State's fiscal year ending June 30, 2006.

The current revised budget below, which includes the additional requirements payment expected this year, considers the following:

- total projected revenues, including interest earned, between April 2003 through June 30, 2013;
- actual expenditures from 2003 through the state fiscal year ending June 30, 2007;
- projected expenditures from July 2007 through June 30, 2013.

Revised HAVA Budget – March 2008

HAVA Budget – 2003-2013			
	Estimated/Actual Costs	Duration	Comments
Section 102 Funds:			
Replacement of Punch Card Voting Systems in 5 counties in the State	$ 2,323,852	April 2003 through August 2006	Section 102 Funds and interest distributed to all five counties who replaced punch card systems prior to August 2006.
Section 101, Title II, State Match Funds, and Earned Interest:			
Section 301 Compliant Voting Systems for counties in the State, including at least one accessible system per polling place	$15,178,955	March 2006 – December 2010	Through February 2008, $14.8 million of the obligated amount had been distributed to the counties. For the 2006 Primary Election, every polling place in the state had at least one HAVA-compliant voting system.
Centralized Statewide Voter Registration System	$24,372,240	January 2003 – June 2013	Costs include hardware, software, IV&V, Project Management, Training, technical support, on-going maintenance and upgrades, as well as miscellaneous expenses to implement and maintain system through June 2013.
Voter Outreach and Education; Training of Election Officials	$ 401,053	July 2003 – June 2013	Includes expenditures related to Provisional Voting, Voter Information Requirements, and training on complaint procedures.
State Budget and Fiscal Controls; Election Reform Program Management and other activities to improve the administration of federal elections	$ 7,987,888	January 2003 – July 2012	Includes administrative costs to manage the HAVA Program and activities related to voting system standards.
Remaining Funds	$ 644,723		Undesignated beyond FY13.
Total	**$50,908,711**		**(Equals revenues expected through June 2013)**

Section 7 – Maintenance of Effort

How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.
-- HAVA §254 (a)(7)

The State maintains expenditures for activities funded by the requirements payment at a level at or above the expenditure level that existed prior to the receipt of federal funds. No federal funds for requirements payments are used to supplement the state budget for operation and administration of the Office of the Secretary of State, or to supplant funding historically received from state sources for election-related purposes.

Colorado's HAVA enabling legislation (H.B. 03-1356) contains a number of provisions that, taken together, require maintenance of effort that meets and exceeds the requirements of HAVA 2002. These provisions include the following:

- Federal monies may only be used for the purposes specified by HAVA 2002[2].
- Monies in the State Fund are statutorily appropriated only for "the proper administration, implementation, and enforcement of HAVA", and such monies may not be transferred to any other fund.[3]
- Every year that the State receives federal funds, the General Assembly is required to make annual appropriations for "election-related purposes that is not less than the level of expenditures for such purposes maintained by the state for the 2001-02 fiscal year".[4]
- Every year that the State receives federal funds, the Secretary of State is required to maintain expenditures to support the statewide voter registration system from nonfederal monies at a level at or above the level for the 2001-02 fiscal year.[5]
- Every county fiscal year that the State receives federal funds, each county is required to maintain the same level of expenditures on activities arising under Title III of HAVA 2002 that it expended in fiscal year ending prior to November 2002.[6]

As can be seen, these state requirements exceed the maintenance of effort required by HAVA 2002. First, the State legislation requires maintenance of all election-related funding at previous levels, but HAVA 2002 only requires maintenance of those election expenditures that are related to Title III activities.

Second, HAVA 2002 only requires maintaining state expenditures at the level of State Fiscal Year 99-00 level (the first fiscal year ending prior to November 2000). The State legislation uses a later and higher base year, FY 2001-02.

Third, the State's legislation imposes an additional maintenance-of-effort requirement on counties that is not required by HAVA 2002. Under section 1-1.5-106 (6), above, "each county shall maintain not less than the same amount of expenditures on activities arising under Title III of HAVA 2002 that it expended on such activities for its fiscal year ending prior to November 2002".

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[2] Section 1-1.5-106 (2) (a), Colorado Revised Statutes.
[3] Section 1-1.5-106 (2) (b), Colorado Revised Statutes
[4] Section 1-1.5-106 (4), Colorado Revised Statutes
[5] Section 1-1.5-106 (5), Colorado Revised Statutes
[6] Section 1-1.5-106 (6), Colorado Revised Statutes.

Section 8 – Performance Goals and Measures

How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.
-- HAVA §254 (a)(8)

Colorado understands that accurate measurement and tracking of performance goals is paramount in achieving a successful implementation of HAVA. Performance goals provide a high-level view of a project's direction. The State's goal has been to achieve election reform and compliance with HAVA requirements through the successful implementation of the programs outlined in the State Plan. Below, in Table 8.1, details are provided of each performance goal, desired outcome, timeline and responsible parties for ensuring that each goal is met.

Table 8.1

PROGRAM PERFORMANCE GOAL	DESIRED OUTCOME	MEASUREMENT	TIMELINE	RESPONSIBLE PARTIES
Eliminate punch card machines in polling places	Elimination of punch card machines in any polling place in Colorado.	Number of punch card machines in use.	Complete	Secretary of State Boulder County Jefferson County Mesa County Montrose County Pitkin County
Implement a centralized statewide voter registration system	Assimilation of accurate voter registration information from various county election systems into a centralized system. Assimilation and continuation of voter registration and election management functionality from local election systems.	Number of counties using SWVR. Number of requirements met. Level of satisfaction with stakeholders.	03/01/06 – 03/31/08	Secretary of State and Local Election Officials
Increase timeliness of voter registration entry and modification.	Voter registration records entered or modified within one business day.	Comparison between Registration Date and Date of Entry. Number of Provisional Ballots.	Continuous	Secretary of State, DMV and Local Election Officials

March 2008 Update:

The maintenance of effort requirement of HAVA relates only to activities on which the state spends money that are consistent with the requirements of Title III of HAVA. The intent of the requirement is to prevent a state from replacing its own funding with federal funding.

Colorado, either at the State level or at the county level, has not supplanted its own funding with federal funding in the conduct of elections. The only HAVA funds distributed to the counties have been for the acquisition of required HAVA compliant voting systems in 2006, and since these systems did not exist prior to the 2000 General Election, no HAVA funds were used to replace county funds spent on voting systems prior to 2000.

Counties are required to provide relevant election expenditure information to the Department on an annual basis. At the state and the county level, determining the baseline level has been challenging. In 1999 and 2000, the HAVA baseline period for determining the maintenance of effort requirement, records were not maintained at either the state or county level according to the 2002 requirements of HAVA because HAVA did not exist. Using the best information available and interpreting expenditures in those early years, the State has determined that its baseline level of spending to maintain on activities consistent with the requirements of Title III of HAVA is $48,427. The State has maintained this level on Title III requirements since 2001; in 2004, the year in which Colorado received the first Title II requirements payment, the State's maintenance of effort expenditures were $243,306.

PROGRAM PERFORMANCE GOAL	DESIRED OUTCOME	MEASUREMENT	TIMELINE	RESPONSIBLE PARTIES
Increase the accessibility of polling places to persons with special access needs	Polling places, throughout the state, that are freely accessible by all voters.	Number of complaints on polling place accessibility.	Continuous	Local Election Officials
Increase the timeliness of resolution of grievances	Grievances resolved within 5 business days.	Comparison between Grievance Date and Resolution Date.	Continuous	Secretary of State
Increase the timeliness and accuracy of removing a deceased voter from the voter registration rolls	Remove deceased voters from registration list within 60 days. Less than .5% error rate on matches (false positives).	Comparison between Date of Death and Status Change Date on SWVR. Number of erroneous matches / Total number of matches.	Continuous	Secretary of State and the Colorado Department of Public Health and Environment, Vital Records Division
Increase the timeliness and accuracy of removing convicted felons from the voter registration rolls	Remove felon voters from registration list within 30 days. Less than .5% error rate on matches (false positives).	Comparison between Date of Incarceration and Status Change Date on SWVR. Number of erroneous matches / Total number of matches.	Continuous	Secretary of State, the Colorado Department of Corrections, and the U.S. Department of Justice
Eliminate duplicate voter registrations across counties within Colorado	No duplicate registration records.	Number of duplicate voter registration records.	Continuous	Secretary of State and Local Election Officials
Improve the timeliness and accuracy of Voter registrations from DMV.	Voter registration records entered within one business day.	Comparison between Registration Date and Date of Entry.	Continuous	Secretary of State and DMV

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PROGRAM PERFORMANCE GOAL	DESIRED OUTCOME	MEASUREMENT	TIMELINE	RESPONSIBLE PARTIES
Improve ID validation via Drivers License and SSN checks	Valid Drivers License Numbers on all voter registration records. Valid Social Security Numbers on all voter registration records.		Continuous	Secretary of State, DMV and SSA

March 2008 Update:

The State will adopt new goals and measures as necessary if new activities are implemented. For the activities for which the State will expend the additional requirements payment, measures are incorporated into the contract with the vendor as required by the State's contracting process.

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Section 9 – Administrative Complaint Procedures

A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402.
-- HAVA §254 (a)(9)
Deadline for Compliance: Prior to certification of State Plan, but no later than January 1, 2004; no waiver permitted.

The Secretary of State has developed a unified statewide complaint system process for tracking and managing suspected violations of Title III of HAVA. This process meets the following requirements:

- The procedures are uniform and nondiscriminatory.
- Any person who believes there is a violation of Title III may file a complaint.
- Complaints shall be in writing and notarized, signed and sworn by the person filing the complaint.
- The state may consolidate complaints.
- At complainant's request, there shall be a hearing on the record.
- The state shall provide an appropriate remedy if it finds a violation has occurred.
- If no violation is found, the complaint shall be dismissed and the results published.
- Complaints shall have a final resolution within 90 days of the complaint being filed, unless the complainant consents to a longer period.
- If the complaint cannot be resolved within that period, an alternative dispute resolution procedure must be provided.

The Secretary of State formed a subcommittee to address this HAVA requirement effectively. This subcommittee was comprised of various stakeholders representing:

- County Clerk and Recorders
- County elections staff
- Colorado Civil Rights Commission
- Colorado General Assembly
- Political parties
- State Attorney General's Office
- Office of the Secretary of State.

This subcommittee developed guiding principles for the complaint process to the requirements listed above. The complaint process:

- must follow federal and state law;
- should not be complicated for the aggrieved party;
- should be easily accessible for the disabled;
- should be public within the parameters of state and federal law;
- should be easily tracked by all interested parties;
- should allow for local filing and resolution;
- should allow for timely resolution within HAVA timelines; and
- should address alternate language needs as required by law.

The subcommittee agreed to address the complaint procedures by breaking down the tasks into the following sections:

- Submission Process
- Review Process
- Alternative Dispute Resolution
- Forms
- Manuals
- Resolution Process
- HAVA Timelines

Submission Process

The Submission Process[7] allows for the local receipt of complaints or filing directly with the Secretary of State. Upon receipt of a HAVA 2002 Title III complaint, the local election official forwards the complaint within one business day to the Secretary of State who receives and tracks all HAVA complaints.

In accordance with state and federal law, the complaint must be in writing and notarized, signed and sworn by the person filing the complaint, involve an alleged violation of Title III of HAVA 2002 , and filed within one year from the date of the alleged violation or the election, whichever is later. A form has been developed to aid the complainant in providing the required information. The complainant has the option of utilizing the form or filing a letter with required information.

Complaints filed with the local election official shall be faxed to the Secretary of State within one business day of receipt. The original shall be mailed and a copy retained for the local file. Conversely, complaints filed with the Secretary of State shall be faxed to the local election official within one business day of receipt. A copy must be mailed and the Secretary of State will retain the original.

Upon receipt at the Office of the Secretary of State, the complaint is date stamped, logged in, and assigned a state ID number for tracking. A receipted copy will must be faxed to the local election official.

The complaint form or letter is checked for required information, and an acknowledgement of receipt is sent to the complainant. The acknowledgement shall indicate the tracking number and general instructions for tracking the complaint.

Review Process

The Colorado Help America Vote Act, exempts the HAVA Administrative Complaint Procedures from the Administrative Procedure Act in C.R.S. 1-1.5-105(3)(b).

[7] §1-1.5-105, Colorado Revised Statutes.

Under the Review Process, the Secretary of State has several options available:

- Local Resolution
- Resolution/Remedy without a hearing
- Dismissal
- Consolidation
- Extension
- Hearing
- Determination

Alternative Dispute Resolution

The Alternative Dispute Resolution (ADR) procedure is required if the Secretary of State does not issue a final determination concerning the complaint within 90 days of filing. All complaints requiring ADR will be forwarded to the Colorado Judicial Office of Dispute Resolution for final resolution within sixty days.

An agreement may be drafted between the Colorado Judicial Office of Dispute Resolution and the Secretary of State to address the ADR requirements for the HAVA Administrative Complaint Procedure.

Forms

A form for the filing of a complaint is available on the Secretary of State's website to aid the complainant in providing the required information. The complainant is not be required to utilize the form, but is required by rules to provide certain information in a written, notarized complaint.

Manuals

Instructions to aid the complainant in filing and tracking a complaint are also available online. The instructions are posted on the Secretary of State website and available in alternative languages in counties as required by law.

An instruction sheet for local election officials provides uniformity in handling the complaints statewide.

Resolution Process

A brief outline of the resolution process includes the following basic elements:

- Filing
- Tracking
- Review (with or without hearing)
- Consolidation and Extension
- Determination, which may include dismissal
- Alternative Dispute Resolution (if no determination within 90 day timeframe)
- Court Appeal (if complainant is not satisfied with final determination or ADR is unsuccessful)

HAVA Timelines

The timelines for filing a complaint under the HAVA Colorado Administrative Complaint Procedure and disposition/resolution of the complaint are clearly outlined in federal and state law:

WITHIN ONE BUSINESS DAY the local election official shall transmit a Title III HAVA complaint filed with the local official to the Secretary of State.

WITHIN ONE YEAR of the occurrence of the alleged violation or of the election giving rise to the complaint, whichever, is later; the complaint must be filed with the Secretary of State. [C.R.S. 1-1.5-105(2)(d)]

WITHIN 90 DAYS of the date the complaint is filed, the Secretary of State must issue a decision on the complaint [C.R.S. 1-1.5-105(2)(i)], unless the complainant consents to a longer period for making such determination. [HAVA Section 402(a)(2)(H)]

WITHIN 60 DAYS following the 90-day time frame, if the Secretary of State fails to issue a final decision on the complaint, the complaint shall be resolved under the Alternative Dispute Resolution Procedure established by the Secretary of State. [C.R.S. 1-1.5-105(2)(j) and HAVA Section 402(a)(2)(I)]

WITHIN 30 DAYS following the final determination by the Secretary of State, an aggrieved party may appeal the Secretary's determination to the District Court in and for the City and County of Denver. [C.R.S. 1-1.5-105(4)]

Section 10 – Effect of Title I Payments

If the State received any payment under title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.
-- HAVA §254 (a)(10)

Colorado received $7.04 million under Sections 101 and 102, Title I of HAVA.

§101 – Payments to states for activities to improve administration of elections

Colorado received $4.7 million to improve the administration of elections for Federal office. These funds have been, and will continue to be used to address the following activities:

- ❖ Administer HAVA in the State
- ❖ Comply with Title III requirements, and
- ❖ Improve the administration of elections for Federal office.

§102 – Replacement of punch card or lever voting machines

Colorado received $2.2 million in Section 102 funds for the replacement of punch card voting systems in 682 qualifying precincts in five counties in the State. With interest earned on those funds, the state distributed over $2.3 million in 2005 and 2006 to Boulder, Jefferson, Mesa, Montrose, and Pitkin Counties who, prior to the August 2006 Primary Election, had replaced all punch-card equipment in the state.

Table 10.1 lists the Colorado precincts for equipment buy-out:

Table 10.1

COUNTY	PRECINCTS
Boulder	249
Jefferson	322
Mesa	71
Montrose	22
Pitkin	18
Total	**682**

March 2008 Update:

The State has approximately $3,000,000 remaining in Title I, Section 101 funds received in 2003. These funds are used primarily to administer the HAVA program in the State and will not affect the new activities proposed to be carried out with the additional 2008 requirements payment.

Section 11 – State Plan Management

How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change—

(A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;

(B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and

(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

-- HAVA §254 (a)(11)

Colorado has used the State Plan as the basis for managing the activities necessary for the implementation of HAVA requirements. The Secretary of State is ultimately responsible for the management and implementation of the State Plan.

Title II of the Help America Vote Act requires each state to describe how it will manage the implementation of its proposed HAVA plan. This description must include who is responsible for implementation and monitoring, the process for changing the state plan, implementation timelines, and reporting requirements for counties and projects. Colorado has conduct plan management at multiple levels.

In Colorado, the Chief State Election Official is the Secretary of State. The Secretary of State has the ultimate responsibility for the implementation of HAVA requirements. As a result, the Secretary of State possesses has final authority in decision-making and management of the HAVA program.

Individual leaders have responsibility for the day-to-day coordination and implementation of distinct projects within the HAVA plan. These project managers may be State Elections Division staff, Contractors, or county representatives. Project managers and project/task leaders determine appropriate reporting based upon the needs, requirements, complexity, and risk factors of each project.

The State of Colorado will comply with HAVA requirements related to ongoing management of the State Plan. Future material changes in the administration of the State Plan will not be made unless the change is developed and published in the Federal Register in accordance with HAVA §255 and §256.

Section 12 – Changes to State Plan from Prior Year

In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

-- HAVA §254 (a) (12)

The Colorado State Plan was initially submitted as required under P.L. 197-252 in July of 2003.

Changes have been integrated into this document on an as needed basis where they apply.

March 2008 Update:

Changes since March 2007 have been integrated into this document as applicable.

Section 13 – Colorado HAVA Team

This vision of elections to come in Colorado is a direct result of the dedicated teamwork of community stakeholders who have donated their time and talent to this long-term project. Ensuring integrity, independence and self-determination is an exciting challenge that the Help America Vote Act Committee and Subcommittees have embraced enthusiastically.

For further information please visit our website at:

www.sos.state.co.us
In the "Election Center"
Under
"Help America Vote"

1700 Broadway Suite 270
Denver, CO 80290
(303) 894-2200
(Select "3" for the Elections Division)

Public Comment Period for this Document is August 1, 2007 Through September 1, 2007. To provide public comment please email your comments to:

sos.elections@sos.state.co.us

March 6, 2008

Public Comment Period for the updates to this document is March 6, 2008 through April 5, 2008. Public comments should be emailed to:

sos.elections@sos.state.co.us

Glossary

TERM	DEFINITION
ADA	Americans with Disabilities Act
ADR	Alternative Dispute Resolution
C.R.S.	Colorado Revised Statutes
DRE	Direct Recording Electronic
FEC	Federal Elections Commission
H.B.	House Bill
HAVA	Help America Vote Act
IT	Information Technology
NASED	National Association of State Election Directors
NIST	National Institute of Standards and Technology
P.L.	Public Law
PMO	Project Management Office
RFB	Request for Bid
RFI	Request for Information
RFP	Request for Proposal
S.B.	Senate Bill

[FR Doc. E8–15871 Filed 7–11–08; 8:45 am]
BILLING CODE 6820–KF–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–429–000]

Kern River Gas Transmission Company; Notice of Application

July 7, 2008.

Take notice that on June 20, 2008, Kern River Gas Transmission Company (Kern River), 2755 East Cottonwood Parkway, Suite 300, Salt Lake City, Utah 84121, filed an abbreviated application in the above referenced docket pursuant to section 7(c) of the Natural Gas Act (NGA), and Subpart 157 of the Commission's regulations, for an order granting (1) a certificate of public convenience and necessity authorizing Kern River to construct and/or modify, and operate the facilities needed to expand its year-round, firm transportation capacity from Opal receipt meter in Lincoln County, Wyoming, to the Daggett-PG&E and Kramer Junction delivery meters in San Bernardino County, California, by 145,000 Dth/d; (2) an increase to its certificate pipeline maximum allowable operating pressure (MAOP) from 1,200 psig to 1,333 psig, and an increase to its certificated compressor and meter station MAOP from 1,250 psig to 1,350 psig; (3) predetermination that the costs and fuel usage associated with Kern River's 2010 Expansion may be rolled into Kern River's 2003 Expansion for transportation rate and fuel reimbursement purposes; (4) approval of regulatory asset/liability accounting for differences between book and regulatory depreciation resulting from use of Kern River's levelized rate design; (5) approval of Kern River's proposed accounting treatment for contributions in aid of construction integral to the 2010 Expansion design; and, (6) acceptance of the pro forma tariff sheets included in Exhibit P to the application, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

The proposed new facilities, modifications to existing facilities and the requested MAOP uprate include (1) installation of a new 20,500 ISO-rated horsepower turbine driven compressor at the Muddy Creek compressor station B Plant in Lincoln County, Wyoming; (2) compressor restaging at the Muddy Creek and Painter compressor stations; and (3) installation of additional measurement equipment at the Opal and Kramer Junction meter stations. The proposed additions, modifications and uprates will add a net 20,500 ISO-rated horsepower to the Kern River system, increasing its summer design capacity from 1,731,126 Dth/d to 1,876,126 Dth/d. The estimated total cost of the proposed 2010 Expansion is $62.1 million, which will be financed with internally generated funds. Kern River proposes to charge 2010 Expansion shippers the transportation rates and fuel reimbursement charges applicable to Kern River's 2003 Expansion.

Any questions concerning this application may be directed to Billie L. Tolman, Manager, Regulatory Affairs, Kern River Gas Transmission Company, 2755 East Cottonwood Parkway, Suite 300, Salt Lake City, Utah 84121, at (801) 937–6176.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: July 28, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15884 Filed 7–11–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1164–000]

Escanaba Paper Company; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 7, 2008.

This is a supplemental notice in the above-referenced proceeding of Escanaba Paper Company's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 28, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15881 Filed 7–11–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1172–000]

Grand Ridge Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 7, 2008.

This is a supplemental notice in the above-referenced proceeding of Grand Ridge Energy, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 28, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15882 Filed 7–11–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1189–000]

Indeck-Yerkes Limited Partnership; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 7, 2008.

This is a supplemental notice in the above-referenced proceeding of Indeck-Yerkes Limited Partnership's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is July 28, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online link at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15883 Filed 7–11–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–434–000]

Kinder Morgan Louisiana Pipeline, LLC; Notice of Request Under Blanket Authorization

July 7, 2008.

Take notice that on July 1, 2008, Kinder Morgan Louisiana Pipeline, LLC (Kinder Morgan), 3250 Lacy Road, Suite 700, Downers Grove, Illinois 60515, filed in Docket No. CP08–434–000, an application pursuant to sections 157.205, 157.208, 157.211, and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to construct and operate a bi-directional interconnection on Kinder Morgan's pipeline in Acadia Parish, Louisiana, in order to deliver revaporized natural gas to Pine Prairie Energy Center, LLC's (Pine Prairie's) storage facility and to subsequently receive natural gas from Pine Prairie, under Kinder Morgan's blanket certificate issued in Docket No. CP06–451–000,[1] all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Kinder Morgan states that it proposes to construct and operate a bi-directional interconnection and appurtenant facilities at approximate Mile Post 109 on Kinder Morgan's pipeline in Acadia Parish in order to deliver up to 600 MMcf/day of revaporized natural gas to Pine Prairie's storage facility and to subsequently receive natural gas from Pine Prairie. Kinder Morgan also states that the proposed interconnection would provide shippers on Kinder Morgan's pipeline system access to Pine Prairie's storage development. Kinder Morgan further states that the proposed interconnection facilities would cost approximately $3,200,000 to construct and would be placed in service during December 2008.

Any questions concerning this application may be directed to Norman Watson, Director, Business Development, Kinder Morgan Louisiana Pipeline LLC, 500 Dallas Street, Suite 1000, Houston, Texas 77002, telephone at (713) 369–9219, or Bruce Newsome, Vice President, 3250 Lacey Road, Suite 700, Downers Grove, Illinois 60515, telephone at (630) 725–3070.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15878 Filed 7–11–08; 8:45 am]

BILLING CODE 6717–01–P

[1] 119 FERC ¶ 61,309 (2007).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–74–000]

Central Maine Power Company; Notice of Filing

July 7, 2008.

Take notice that on July 1, 2008, Central Maine Power Company filed a Petition for Declaratory Order Authorizing Incentive Rates for the Maine Power Reliability Program, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, section 219 of the Federal Power Act, 16 U.S.C. 824s, Order No. 679, and section 35.35 of the Commission's regulations, 18 CFR 35.35.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll-free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 1, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15880 Filed 7–11–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–73–000]

Interstate Power and Light Company; Notice of Filing

July 7, 2008.

Take notice that on June 27, 2008, Interstate Power and Light Company filed a Petition for Declaratory Order Regarding Payment of Dividends from Other Paid-In Capital, pursuant to Rule 207 of the Commission Rules of Practice and Procedure, 18 CFR 385.207.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 pm Eastern Time on July 18, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15879 Filed 7–11–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR08–15–000; PR08–15–001]

Energy Transfer Fuel, L.P. Notice of Shortened Comment Period

July 7, 2008.

Take notice that on July 3, 2008, Energy Transfer Fuel, L.P. filed a Stipulation and Agreement of Settlement (Settlement) in the above-docketed proceeding. Included in its filing was a request to shorten the period for filing initial and reply comments in response to the Settlement.

We are shortening the date for filing initial comments to and including July 9, 2008. Reply comments should be filed on or before July 11, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15877 Filed 7–11–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–OECA–2007–0466; FRL–8691–7]

Agency Information Collection Activities: Proposed Collection; Comment Request, State Review Framework; EPA ICR Number 2185.03

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on November 30, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 12, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–OECA–2007–0466, by one of the following methods:

- *http://www.regulations.gov:* (our preferred method) Follow the on-line instructions for submitting comments.
- *E-mail: carbone.chad@epa.gov.*
- *Fax:* 202–564–0027.
- *Mail:* Enforcement and Compliance Docket, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–OECA–2007–0466. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Chad Carbone, Office of Enforcement and Compliance Assurance, Office of Compliance, MC: 2221A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–564–2523; *fax number:* 202–564–0027; *e-mail address: carbone.chad@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–OECA–2007–0466, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate 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;

(ii) Enhance the quality, utility, and clarity of the information to be collected; and

(iii) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Docket ID No. EPA–OECA–2007–0466.

Affected entities: Entities potentially affected by this action are 10 EPA Regional Offices, 50 States, 4 Territories, and 40 Local Agencies.

Title: State Review Framework.

ICR numbers: EPA ICR No. 2185.03, OMB Control No. 2020–0031.

ICR status: This ICR is currently scheduled to expire on November 30, 2008. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The State Review Framework (''Framework'') is an oversight tool designed to assess state performance in enforcement and compliance assurance. The Framework's goal is to evaluate state performance by examining existing data to provide a consistent level of oversight and develop a uniform mechanism by which EPA Regions, working collaboratively with their states, can ensure that state environmental agencies are consistently implementing the national compliance and enforcement program in order to meet agreed-upon goals. Furthermore, the Framework is designed to foster dialogue on enforcement and compliance performance between the states that will enhance relationships and increase feedback, which will in turn lead to consistent program management and improved environmental results. The Framework is described in the April 26, 2005 **Federal Register** Notice (79 FR 21408). This amendment will allow OECA to collect information from enforcement and compliance files reviewed during routine on-site visits of state or local agency offices that will assist in the evaluation of the State Review Framework implementation from FY 2005 to the end of FY 2007. This request will allow EPA to make inquiries to assess the State Review Framework process, including the consistency achieved among the EPA Regions and states, the resources required to conduct

the reviews, and the overall effectiveness of the program.

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.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 376.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 94.

Frequency of response: Once every four years.

Estimated total average number of responses for each respondent: one.

Estimated total annual burden hours: 20,331 hours.

Estimated total annual costs: $679,597.02. This includes an estimated burden cost of $ 0 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

There is an increase of 3,851.8 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects EPA's recent experience with administering the SRF program, an estimated increase in the number of respondents during the next SRF cycle, and its work with the states to try to improve the value and utilization of the elements and metrics by which state environmental programs are measured. Based upon revised estimates, the annual public reporting and recordkeeping burden for the collection of information under the SRF program has decreased from 384 to 376.5 hours. Additional numbers for these estimates are still being collected and confirmed, so these estimates may change in the final ICR.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: July 7, 2008.

Lisa Lund,

Office Director, Office of Compliance, OECA.

[FR Doc. E8–16015 Filed 7–11–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8690–8; EPA–HQ–OW–2008–0238]

Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permit issuance.

SUMMARY: EPA Regions 1, 3, 6, 7, 8, 9, and 10 today are issuing their 2008 National Pollutant Discharge Elimination System general permits for stormwater discharges from new dischargers engaged in large and small construction activities. Hereinafter, these NPDES general permits will be referred to as ''permit'' or ''2008 construction general permit'' or ''2008 CGP.'' ''New dischargers'' are those who did not file a notice of intent (''NOI'') to be covered under the 2003 construction general permit (''2003 CGP'') before it expired. Existing dischargers who properly filed an NOI to be covered under the 2003 CGP continue to be authorized to discharge under that permit according to its terms. The 2008 CGP contains the same limits and conditions as the Agency's 2003 CGP with the exception of a few minor modifications which are detailed below. EPA is issuing this CGP for a period not to exceed two (2) years and will make the permit available to new construction activities and unpermitted ongoing activities only.

DATES: This permit shall be effective on June 30, 2008. This effective date is necessary to provide dischargers with the immediate opportunity to comply with Clean Water Act requirements in light of the expiration of the 2003 CGP on July 1, 2008. In accordance with 40 CFR Part 23, this permit shall be considered issued for the purpose of judicial review on July 28, 2008. Under section 509(b) of the Clean Water Act, judicial review of this general permit can be had by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of notices of intent are provided in Part 2.3 of the permit. This permit also provides additional dates for compliance with the terms of these permits.

FOR FURTHER INFORMATION CONTACT: Greg Schaner, Water Permits Division, Office of Wastewater Management (Mail Code: 4203M), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., EPA East, Washington, DC 20460; *telephone number:* (202) 564–0721; *fax number:* (202) 564–6431; e-mail address: *schaner.greg@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

If a discharger chooses to apply to be authorized to discharge under the 2008 construction general permit (''2008 CGP''), the permit provides specific requirements for preventing contamination of stormwater discharges from the following construction activities:

Category	Examples of affected Entities	North American Industry Classification System (NAICS) code
Industry	Construction site operators disturbing 1 or more acres of land, or less than 1 acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more, and performing the following activities:	
	Building, Developing and General Contracting	233
	Heavy Construction	234

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of activities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the definition of ''construction activity'' and ''small construction activity'' in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Eligibility for coverage under the 2008 CGP is limited to operators of ''new projects'' or ''unpermitted ongoing projects.'' A ''new project'' is one that commences after the effective date of the 2008 CGP. An ''unpermitted ongoing project'' is one that commenced prior to the effective date of the 2008 CGP, yet never received authorization to discharge under the 2003 CGP or any other NPDES permit covering its construction-related stormwater discharges. This permit is effective only in those areas where EPA is the permitting authority. A list of eligible areas is included in Appendix B of the 2008 CGP.

B. How Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OW–2008–0238. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Publicly available docket materials are available in hard copy at the EPA Docket Center Public Reading Room, 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 Water Docket is (202) 566–2426.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. Electronic versions of the final permit and fact sheet are available at EPA's stormwater Web site *http://www.epa.gov/npdes/stormwater.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.regulations.gov/fdmspublic/component/main* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search'', then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.B.1.

Response to public comments. EPA received 9 comments on the proposed permit from industry (7), state government (1), and the public (1). EPA has responded to all significant comments received and has included these responses in a separate document in the public docket for this permit. See the document titled *Proposed 2008 CGP: EPA's Response to Public Comments*.

C. Who Are The EPA Regional Contacts for This Permit?

For EPA Region 1, contact Thelma Murphy at tel.: (617) 918–1615 or e-mail at *murphy.thelma@epa.gov*.

For EPA Region 2, contact Stephen Venezia at tel.: (212) 637–3856 or e-mail at *venezia.stephen@epa.gov*, or for Puerto Rico, contact Sergio Bosques at tel.: (787) 977–5838 or e-mail at *bosques.sergio@epa.gov*.

For EPA Region 3, contact Garrison Miller at tel.: (215) 814–5745 or e-mail at *miller.garrison@epa.gov*.

For EPA Region 5, contact Brian Bell at tel.: (312) 886–0981 or e-mail at *bell.brianc@epa.gov*.

For EPA Region 6, contact Brent Larsen at tel.: (214) 665–7523 or e-mail at: *larsen.brent@epa.gov*.

For EPA Region 7, contact Mark Matthews at tel.: (913) 551–7635 or e-mail at: *matthews.mark@epa.gov*.

For EPA Region 8, contact Greg Davis at tel.: (303) 312–6314 or e-mail at: *davis.gregory@epa.gov*.

For EPA Region 9, contact Eugene Bromley at tel.: (415) 972–3510 or e-mail at *bromley.eugene@epa.gov*.

For EPA Region 10, contact Misha Vakoc at tel.: (206) 553–6650 or e-mail at *vakoc.misha@epa.gov*.

II. Background of Permit

A. Statutory and Regulatory History.

The Clean Water Act (''CWA'') establishes a comprehensive program ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' 33 U.S.C. 1251(a). The CWA also includes the objective of attaining ''water quality which provides for the protection and propagation of fish, shellfish and wildlife.'' 33 U.S.C. 1251(a)(2)). To achieve these goals, the CWA requires EPA to control discharges through the issuance of National Pollutant Discharge Elimination System (''NPDES'') permits.

Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA), which directed EPA to develop a phased approach to regulate stormwater discharges under the NPDES program. EPA published a final regulation in the **Federal Register** on the first phase of this program on November 16, 1990, establishing permit application requirements for ''storm water discharges associated with industrial activity.'' See 55 FR 47990. EPA defined the term ''storm water discharge associated with industrial activity'' in a comprehensive manner to cover a wide variety of facilities. Construction activities, including activities that are part of a larger common plan of development or sale, that ultimately disturb at least five acres of land and have point source discharges to waters of the U.S. were included in the definition of ''industrial activity'' pursuant to 40 CFR 122.26(b)(14)(x). Phase II of the stormwater program was published in the **Federal Register** on December 8, 1999, and required NPDES permits for discharges from construction sites disturbing at least one acre, but less than five acres, including sites that are part of a larger common plan of development or sale that will ultimately disturb at least one acre but less than five acres, pursuant to 40 CFR 122.26(b)(15)(i). See 64 FR 68722. EPA is issuing the 2008 CGP under the statutory and regulatory authority cited above.

NPDES permits issued for construction stormwater discharges are required under Section 402(a)(1) of the CWA to include conditions for meeting technology-based effluent limits established under Section 301 and, where applicable, Section 306. Once an effluent limitations guideline or new source performance standard is promulgated in accordance with these sections, NPDES permits are required to incorporate limits based on such limitations and standards. See 40 CFR 122.44(a)(1). Prior to the promulgation of national effluent limitations and standards, permitting authorities incorporate technology-based effluent limitations on a best professional judgment basis. CWA section 402(a)(1)(B); 40 CFR 125.3(a)(2)(ii)(B).

B. Summary of Permit

Construction operators choosing to be covered by the 2008 CGP must certify in their notice of intent (NOI) that they meet the requisite eligibility requirements, described in Part 1.3 of the permit. If eligible, operators are authorized to discharge under this permit in accordance with Part 2. Permittees must install and implement control measures to meet the effluent limits applicable to all dischargers in Part 3, and must inspect such stormwater controls and repair or modify them in accordance with Part 4. The permit in Part 5 requires all construction operators to prepare a stormwater pollution prevention plan (SWPPP) that identifies all sources of pollution, and describes control measures used to minimize pollutants discharged from the construction site. Part 6 details the requirements for terminating coverage under the permit.

The 2008 CGP is effective for a period of not to exceed two years. The 2008 CGP includes conditions and limits that are nearly identical to the 2003 CGP, with the exception that the 2008 CGP only applies to new and unpermitted ongoing construction projects. Discharges from ongoing projects (or ''existing dischargers'') will continue to be covered under the existing 2003 CGP. (However, EPA clarifies that if an operator of a permitted ongoing project transfers ownership of the project, or a portion thereof, to a different operator, that subsequent operator is required to submit a complete and accurate NOI for a new project under the 2008 CGP.) Although the existing permit expired on July 1, 2008, dischargers who filed notices of intent (NOIs) to be authorized under that permit prior to the expiration date will continue to be authorized to discharge in accordance with EPA's regulations at 40 CFR 122.6. The 2008 CGP only applies to dischargers who were not authorized under the 2003 CGP, which includes both ''new projects'' and ''unpermitted ongoing projects.'' Operators of new projects or unpermitted ongoing projects seeking coverage under the 2008 CGP would be expected to use the same electronic Notice of Intent (eNOI) system that is currently in place for the 2003 CGP.

The other significant difference between the 2003 and 2008 CGPs is that this permit has been reorganized so that it is clearer which requirements are effluent limitations, which are inspection requirements, and which are SWPPP documentation requirements. As a result, the 2008 CGP now includes new sections (Part 3—Effluent Limits, Part 4—Inspections, and Part 5—Stormwater Pollution Prevention Plans) reflecting this reorganization. However, EPA emphasizes that although the requirements in the 2008 CGP have been placed in different sections, the requirements are substantially the same as they were in the 2003 CGP. The reorganized permit will be discussed further in Section III.B, Summary of Significant Changes from the 2003 CGP.

C. What Is EPA's Rationale for the Two-Year Duration of the 2008 CGP?

As stated, EPA is issuing the 2008 CGP for a period not to exceed two years. As a result of recent litigation brought against EPA concerning the promulgation of effluent limitations guidelines and standards for the construction and development (''C&D'') industry, EPA is required by court order to propose effluent limitations guidelines and new source performance standards (hereinafter, ''effluent guidelines'') for the C&D industry by December 2008, and promulgate those effluent guidelines by December 2009. See *Natural Resources Defense Council, et al.* v. *U.S. Environmental Protection Agency,* No. CV–0408307–GH (C.D. Cal.) (Permanent Injunction and Judgment, December 5, 2006). EPA projects that the Agency may publish a proposed rule ahead of the court-ordered deadlines. If EPA publishes the proposed rule ahead of schedule, this may allow the Agency to promulgate a final rule ahead of schedule as well. The Agency currently hopes to promulgate a final rule as early as the end of this calendar year. However, completion of the tasks necessary to do so is dependent on the timing of numerous future activities and factors associated with the effluent guidelines rulemaking process.

EPA believes it will be appropriate to propose a revised CGP once EPA has issued C&D effluent guidelines. The maximum two-year duration for this permit is intended to coincide with the court-ordered deadlines for the C&D rule. EPA intends to propose and finalize a new, revised CGP sooner, if the C&D rule is promulgated earlier than the date directed by the court.

D. Why Is EPA Using Requirements That Are Nearly Identical to the 2003 CGP?

The expiration of the 2003 CGP on July 1, 2008, made it incumbent upon EPA to make available a similar general permit that provided coverage for the estimated 4,000 new dischargers per year commencing construction in the areas where EPA is the permitting authority. Without such a permit vehicle, the only other available option for construction site operators is to obtain coverage under an individual permit. As has been described in the past, issuance of individual permits for every construction activity disturbing one acre or more is infeasible given the resources required for the Agency to issue individual permits. EPA is issuing a CGP that adopts the same limits and conditions as the previous permit (the 2003 CGP) for a limited period of time. This action is appropriate for several

reasons. First, as discussed above, EPA is working on the development of a new effluent guideline that will address stormwater discharges from the same industrial activities (i.e., construction activities disturbing one or more acres) as the CGP. Because the development of the C&D rule and the issuance of the CGP are on relatively similar schedules, and the C&D rule will establish national technology-based effluent limitations and standards for construction activities, EPA believes that it is more appropriate to proceed along two tracks to permit construction discharges. The first track entails issuing the 2008 CGP for a limited period of time, not to exceed 2 years, that contains the 2003 CGP limits and conditions, but for only operators of new and unpermitted ongoing projects, so that such entities can obtain valid permit coverage for their discharges. The second track involves proposing and issuing a revised 5-year CGP that incorporates the requirements of the new C&D rule shortly after the rule is promulgated.

Second, EPA believes that issuing a substantially revised CGP by July 1, 2008, would have been impracticable given the number of unknowns concerning the outcome of the C&D rule. EPA does not believe that it would be appropriate to issue a permit containing technology-based limitations that would be outdated so quickly, given the fact that the C&D rule may be promulgated only a few months after permit issuance. For similar reasons, if EPA had attempted to approximate the requirements of the new C&D rule and incorporate such limits into a new CGP, such a permit would presuppose the outcome of the C&D rule and potentially conflict with the scope and content of the effluent limitation guideline prior to full consideration of public comments. Instead, the Agency believes it is a much better use of Agency resources to wait the short time until after the C&D rule promulgation to issue a revised CGP that is fully reflective of the new effluent limitation guideline. In the meantime, during this relatively short period of time prior to the C&D rule's promulgation and prior to the issuance of the revised CGP that incorporates those standards, EPA is using the permit limits and conditions from the 2003 CGP as an effective vehicle to control new discharges. EPA notes that it has minimized the amount of time during which the 2008 CGP will remain effective in order to underscore the Agency's intention to issue a revised CGP once the C&D rule is finalized.

Third, EPA found the alternative of allowing the 2003 CGP to expire without a replacement, relying instead on an enforcement discretion approach prior to the issuance of the next permit (similar to the practice used for the NPDES Multi-Sector General Permit (MSGP) for stormwater discharges from industrial activities), to be an unacceptable option for stormwater discharges from construction activities. The CGP potentially has an estimated 4,000 new dischargers per year that seek coverage. EPA has made progress with the regulated community in terms of compliance assistance that would be compromised if a permit is not in place during the interim period prior to the promulgation of the C&D rule. For instance, EPA Regional offices have led substantial efforts to boost compliance with the CGP, resulting in an increased rate of compliance among construction operators. EPA anticipated that such efforts would have been undermined, and the compliance rate would have declined, if a new permit were not issued by July 1, 2008. Additionally, the enforcement discretion approach would leave construction operators without a reasonable way to obtain authorization to discharge and would expose them to liability from third party lawsuits for violating the Clean Water Act for unpermitted discharges. A short-term permit that mirrors the existing 2003 CGP addresses these concerns by providing a Federal permit with provisions that have already been reviewed in the previous permit issuance process, and by avoiding any period of time during which dischargers are not able to obtain permit coverage.

III. Scope and Availability of the 2008 CGP

A. Geographic Coverage

This permit provides coverage for discharges from construction sites that occur in areas not covered by an approved State NPDES program. EPA Regions 1, 3, 6, 7, 8, 9, and 10 are issuing the 2008 CGP to replace the expiring 2003 CGP for operators of new and unpermitted ongoing construction projects. The geographic coverage and scope of the 2008 CGP is listed in Appendix B of the permit. The only change from the scope of coverage in the 2003 CGP is that the State of Maine is now the permitting authority for all discharges in the state, including operators in Tribal Lands, and as such, discharges in the State of Maine are no longer eligible for coverage under EPA's CGP. In addition, because certifications required by section 401 of the Clean Water Act, and for a few states, certifications required by the Coastal Zone Management Act, were not received in time, new and unpermitted ongoing construction projects in the following areas are not yet eligible for coverage under this permit:

- The State of New Hampshire;
- Indian country within the State of New York;
- The Commonwealth of Puerto Rico;
- Indian country within the State of Michigan;
- Indian country within the State of Minnesota;
- Indian country within the State of Wisconsin, except the Sokaogon Chippewa (Mole Lake) Community;
- Indian country within the State of Oklahoma;
- Indian country within the State of New Mexico;
- Oil and gas, or geothermal energy, operations in Texas;
- Oil and gas operations, or certain point source discharges associated with agriculture and silviculture in Oklahoma;
- Federal Facilities in the State of Colorado, except those located on Indian country;
- Indian country within the State of Colorado, as well as the portion of the Ute Mountain Reservation located in New Mexico; and
- Indian country within the State of Montana.

EPA will announce the availability of coverage under the CGP for these areas in separate **Federal Register** notice(s) as soon as possible after the certifications are completed. In the meantime, EPA has decided to make administrative or civil enforcement for lack of permit coverage against dischargers in the above areas a low priority because the 2008 CGP will not yet apply to those areas. The Agency's position is outlined in a memorandum from EPA's Office of Enforcement and Compliance Assurance, available in the docket for this permit. This low enforcement priority does not apply to criminal violations or to situations where there are egregious circumstances, such as those resulting in serious actual harm or which may present an imminent and substantial endangerment to public or the environment, or where no control measures are in place to protect public health or the environment. The Office of Enforcement and Compliance Assurance also reserves the right, at any time, to initiate an appropriate enforcement response with respect to a specific discharger should circumstances warrant. Under this low enforcement priority approach, EPA will not pursue actions against dischargers that lack a permit but are meeting the obligations that would have been imposed by the expired 2003 CGP. These obligations include, but are not limited to,

complying with the required effluent limitations, Stormwater Pollution Prevention Plan development and implementation, inspections, and proper installation and maintenance of storm water control measures.

B. Summary of Significant Changes From the 2003 CGP.

As discussed above, EPA is issuing the 2008 CGP for a period not to exceed two years. This permit includes the same limits and conditions as the 2003 CGP with the following differences:

• *Type of Construction Projects That Can Be Covered:* Eligibility for coverage under the 2008 CGP is limited to operators of new and unpermitted ongoing construction projects. However, dischargers from existing dischargers, otherwise referred to as ongoing permitted construction projects, are not eligible for coverage under the 2008 CGP.

• *Distinction Between Effluent Limits and SWPPP Documentation Requirements:* In response to comments, the permit was clarified to clearly distinguish between the effluent limits from the documentation requirements relating to the development of the SWPPP. The effluent limitations (in Part 3) are permit requirements to which all permittees are subject in order to minimize the discharge of pollutants from the site, while the SWPPP (in Part 5) is a planning document that must be prepared by all construction operators that describes the site and the pollutants discharged, and documents the control measures selected, installed, and maintained to meet the effluent limitations in Part 3. Additionally, the inspection requirements, which were previously included in the SWPPP section, have been moved to a separate section (Part 4) to highlight their importance. EPA emphasizes that though the permit has been reorganized, the requirements themselves have not been substantially changed. However, in response to recommendations received by two commenters, EPA included the following two new requirements: (1) A requirement to educate employees or subcontractors as necessary so that they understand their role in implementing stormwater controls (Part 3.6), and (2) a requirement to remove sediment from silt fences before the deposit reaches fifty percent of the above-ground fence height.

• *Eligibility for Tribal Lands in Maine:* Because the State of Maine now has permit authority over Tribal Lands in its state, EPA removed eligibility for operators in Tribal Lands in Maine from the list of areas in Appendix B where this permit is effective.

These changes are discussed in greater detail in the 2008 CGP fact sheet.

C. Permit Appeal Procedures

In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review on July 28, 2008. Under section 509(b) of the Clean Water Act, judicial review of this general permit can be had by filing a petition for review in the United States Court of Appeals with 120 days after the permit is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. In addition, rather than submitting an NOI to be covered under this permit, persons may apply for an individual permit as specified at 40 CFR 122.21 (and authorized at 40 CFR 122.28), and then petition the Environmental Appeals Board to review any conditions of the individual permit (40 CFR 124.19 as modified on May 15, 2000, 65 FR 30886).

IV. Qualified Local Programs

EPA requested comments in the proposal on a draft set of criteria to use in determining which local erosion and sediment control requirements satisfy the 40 CFR 122.44(s) requirements for incorporating qualified local programs (QLPs) into future CGPs. The Agency received several comments relating to the draft QLP criteria. EPA appreciates the feedback provided by these comments. EPA's responses are included in the response to comment document associated with this **Federal Register** notice. EPA clarifies that the draft criteria were not intended to be promulgated as changes to the NPDES regulations. The purpose of the proposal was to share with the public the Agency's current thinking with regard to factors that would be taken into account when proposing to incorporate a QLP into future CGPs. In addition, should the Agency propose to incorporate a QLP into the CGP, it will first need to propose such a modification for public comment as a permit modification.

V. Compliance With the Regulatory Flexibility Act

A. EPA's Approach to Compliance With the Regulatory Flexibility Act for General Permits

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The legal question of whether a general permit (as opposed to an individual permit) qualifies as a ''rule'' or as an ''adjudication'' under the Administrative Procedure Act (APA) has been the subject of periodic litigation. In a recent case, the court held that the CWA Section 404 Nationwide general permit before the court did qualify as a ''rule'' and therefore that the issuance of that general permit needed to comply with the applicable legal requirements for the issuance of a ''rule.'' *National Ass'n of Home Builders* v. *U.S. Army Corps of Engineers,* 417 F.3d 1272, 1284–85 (DC Cir. 2005) (Army Corps general permits under Section 404 of the Clean Water Act are rules under the APA and the Regulatory Flexibility Act; ''Each NWP [nationwide permit] easily fits within the APA's definition 'rule'.* * * As such, each NWP constitutes a rule * * *'').

As EPA stated in 1998, ''the Agency recognizes that the question of the applicability of the APA, and thus the RFA, to the issuance of a general permit is a difficult one, given the fact that a large number of dischargers may choose to use the general permit.'' 63 FR 36489, 36497 (July 6, 1998). At that time, EPA ''reviewed its previous NPDES general permitting actions and related statements in the **Federal Register** or elsewhere,'' and stated that ''[t]his review suggests that the Agency has generally treated NPDES general permits effectively as rules, though at times it has given contrary indications as to whether these actions are rules or permits.'' *Id.* at 36496. Based on EPA's further legal analysis of the issue, the Agency ''concluded, as set forth in the proposal, that NPDES general permits are permits [i.e., adjudications] under the APA and thus not subject to APA rulemaking requirements or the RFA.'' *Id.* Accordingly, the Agency stated that ''the APA's rulemaking requirements are inapplicable to issuance of such permits,'' and thus ''NPDES permitting is not subject to the requirement to publish a general notice of proposed rulemaking under the APA or any other law * * * [and] it is not subject to the RFA.'' *Id.* at 36497.

However, the Agency went on to explain that, even though EPA had concluded that it was not legally

required to do so, the Agency would voluntarily perform the RFA's small-entity impact analysis. *Id.* EPA explained the strong public interest in the Agency following the RFA's requirements on a voluntary basis: ''[The notice and comment] process also provides an opportunity for EPA to consider the potential impact of general permit terms on small entities and how to craft the permit to avoid any undue burden on small entities.'' *Id.* Accordingly, with respect to the NPDES permit that EPA was addressing in that **Federal Register** notice, EPA stated that ''the Agency has considered and addressed the potential impact of the general permit on small entities in a manner that would meet the requirements of the RFA if it applied.'' *Id.*

Subsequent to EPA's conclusion in 1998 that general permits are adjudications rather than rules, as noted above, the DC Circuit recently held that Nationwide general permits under section 404 are ''rules'' rather than ''adjudications.'' Thus, this legal question remains ''a difficult one'' (*supra*). However, EPA continues to believe that there is a strong public policy interest in EPA applying the RFA's framework and requirements to the Agency's evaluation and consideration of the nature and extent of any economic impacts that a CWA general permit could have on small entities (e.g., small businesses). In this regard, EPA believes that the Agency's evaluation of the potential economic impact that a general permit would have on small entities, consistent with the RFA framework discussed below, is relevant to, and an essential component of, the Agency's assessment of whether a CWA general permit would place requirements on dischargers that are appropriate and reasonable. Furthermore, EPA believes that the RFA's framework and requirements provide the Agency with the best approach for the Agency's evaluation of the economic impact of general permits on small entities. While using the RFA framework to inform its assessment of whether permit requirements are appropriate and reasonable, EPA will also continue to ensure that all permits satisfy the requirements of the Clean Water Act.

Accordingly, EPA has committed to operating in accordance with the RFA's framework and requirements during the Agency's issuance of CWA general permits (in other words, the Agency has committed that it will apply the RFA in its issuance of general permits as if those permits do qualify as ''rules'' that are subject to the RFA). In satisfaction of this commitment, during the course of this CGP proceeding, the Agency conducted the analysis and made the appropriate determinations that are called for by the RFA. In addition, and in satisfaction of the Agency's commitment, EPA will apply the RFA's framework and requirements in any future issuance of other NPDES general permits. EPA anticipates that for most general permits the Agency will be able to conclude that there is not a significant economic impact on a substantial number of small entities. In such cases, the requirements of the RFA framework are fulfilled by including a statement to this effect in the permit fact sheet, along with a statement providing the factual basis for the conclusion. A quantitative analysis of impacts would only be required for permits that may affect a substantial number of small entities, consistent with EPA guidance regarding RFA certification.[1]

B. Application of RFA Framework to Issuance of 2008 CGP

EPA has concluded, consistent with the discussion in Section IV.A above, that the issuance of the 2008 CGP could affect a substantial number of small entities. In the areas where the CGP is effective (see Section III.A), an estimated 4,000 construction projects per year were authorized under the 2003 CGP, a substantial number of which could be operated by small entities. However, EPA has concluded that the issuance of the 2008 CGP is unlikely to have an adverse economic impact on small entities. The 2008 CGP includes substantially the same requirements as those of the 2003 CGP. EPA intends to include an updated economic screening analysis with the issuance of the next CGP. EPA concludes that this action will not have a significant economic impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

[1] EPA's current guidance, entitled Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement and Fairness Act, was issued in November 2006 and is available on EPA's Web site: *http://www.epa.gov/sbrefa/documents/rfafinalguidance06.pdf.* After considering the Guidance and the purpose of CWA general permits, EPA concludes that general permits affecting less than 100 small entities do not have a significant economic impact on a substantial number of small entities.

Dated: June 30, 2008.

Robert W. Varney,

Regional Administrator, EPA Region 1.

Dated: June 30, 2008.

Jon M. Capacasa,

Director, Water Protection Division, EPA Region 3.

Dated: June 30, 2008.

Miguel I. Flores,

Director, Water Quality Protection Division, EPA Region 6.

Dated: June 30, 2008.

William A. Spratlin,

Director, Wetlands and Pesticides Division, EPA Region 7.

Dated: June 30, 2008.

Stephen S. Tuber,

Assistant Regional Administrator, Office of Partnerships & Regulatory Assistance, EPA Region 8.

Dated: June 30, 2008.

Nancy Woo,

Acting Director, Water Division, EPA Region 9.

Dated: June 30, 2008.

Michael F. Gearheard,

Director, Office of Water and Watersheds, EPA Region 10.

[FR Doc. E8–15829 Filed 7–11–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Approved by the Office of Management and Budget

July 8, 2008.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. Comments concerning the accuracy of the burden estimate(s) and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cathy Williams, Performance and Evaluation Records Management Division, Office of the Managing Director, at (202) 418–2918 or at *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0009.

OMB Approval Date: June 23, 2008.

Expiration Date: June 30, 2011.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License.

Form Number: FCC Form 316.

Estimated Annual Burden: 750 responses; 1–4 hours per response; 855 hours total per year.

Annual Cost Burden: $425,150.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 154(i) and 310(d) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: On March 17, 2005, the Commission released a Second Order on Reconsideration and Further Notice of Proposed Rulemaking, Creation of a Low Power Radio Service, MB Docket No. 99–25 (FCC 05–75). The Further Notice of Proposed Rulemaking (''FNPRM'') proposed to permit the assignment or transfer of control of Low Power FM (LPFM) authorizations where there is a change in the governing board of the permittee or licensee or in other situations corresponding to the circumstances described above. This proposed rule was subsequently adopted in a Third Report and Order and Second Further Notice of Proposed Rulemaking, MB Docket No. 99–25 (FCC 07–204) (Third Report and Order), released on December 11, 2007.

FCC Form 316 has been revised to encompass the assignment and transfer of control of LPFM authorizations, as proposed in the FNPRM and subsequently adopted in the Third Report and Order, and to reflect the ownership and eligibility restrictions applicable to LPFM permittees and licensees. Filing of the FCC Form 316 is required when applying for authority for assignment of a broadcast station construction permit or license, or for consent to transfer control of a corporation holding a broadcast station construction permit or license where there is little change in the relative interest or disposition of its interests; where transfer of interest is not a controlling one; there is no substantial change in the beneficial ownership of the corporation; where the assignment is less than a controlling interest in a partnership; where there is an appointment of an entity qualified to succeed to the interest of a deceased or legally incapacitated individual permittee, licensee or controlling stockholder; and, in the case of LPFM stations, where there is a voluntary transfer of a controlling interest in the licensee or permittee entity. In addition, the applicant must notify the Commission when an approved transfer of control of a broadcast station construction permit or license has been consummated.

OMB Control Number: 3060–0920.

OMB Approval Date: June 23, 2008.

Expiration Date: June 30, 2011.

Title: Application for Construction Permit for a Low Power FM Broadcast Station.

Form Number: FCC Form 318.

Estimated Annual Burden: 23,377 responses; 0.0025–12 hours per response; 34,396 hours total per year.

Annual Cost Burden: $23,850.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 154(i), 303, 308 and 325(a) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: On December 11, 2007, the FCC released a Third Report and Order and Second Further Notice of Proposed Rulemaking, Creation of a Low Power Radio Service, MM Docket No. 99–25, FCC 07–204. In the Third Report and Order, the FCC extended the local standards for rural markets. Under the old Rules, an LPFM applicant was deemed local if it was physically headquartered or had a campus within ten miles of the proposed LPFM transmitter site, or if 75 percent of its board members resided within ten miles of the proposed LPFM transmitter site. The Third Report and Order modified the ten-mile requirement to twenty miles for all LPFM applicants for proposed facilities in other than the top fifty urban markets, for both the distance from transmitter and residence of board member standards. We have revised the Form 318 to reflect this extension of local standards for rural markets. While the overall number of respondents increases because the Rule change expands the universe of eligible applicants, there are no new information collection requirements with respect to completion of the Form 318.

In the Third Report and Order, the Commission also delegated to the Media Bureau the authority to consider Section 73.807 waiver requests from certain LPFM stations. When implementation of a full-service station community of license modification would result in an increase in interference caused to the LPFM station or its displacement, the LPFM station may seek a second-adjacent channel short spacing waiver in connection with an application proposing operations on a new channel.

The Third Report and Order also allows LPFM stations to file waiver requests of Section 73.809 of the Rules if: (1) it is at risk of displacement by an encroaching full-service station modification application and no alternative channel is available, and (2) it can demonstrate that it has regularly provided at least eight hours per day of locally originated programming. LPFM stations that wish to make a showing under this waiver standard must file an informal objection to the ''encroaching'' community of license modification application.

FCC Form 318 is required: (1) To apply for a construction permit for a new Low Power FM (LPFM) station; (2) to make changes in the existing facilities of such a station; or (3) to amend a pending FCC Form 318 application.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–15843 Filed 7–11–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

July 8, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents,

including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 13, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov or PRA@fcc.gov*. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.''

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0980.

Title: 47 CFR Section 76.66, Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents/Responses: 10,280 respondents; 11,938 responses.

Estimated Hours per Response: 1 to 5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement; Every three years reporting requirement.

Total Annual Burden: 12,146 hours.

Total Annual Cost: $16,000.

Nature of Response: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in the Satellite Home Viewer Extension and Reauthorization Act of 2004, Pub. L. No.108–447, Sections 202, 205, 209, 210, 118 Stat 2809 (2004); 47 CFR Sections 325, 338, 339, and 340.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: On March 27, 2008 the Commission released a Second Report and Order, Memorandum Opinion and Order, and Second Further Notice of Proposed Rulemaking Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues, FCC 08–86, CS Docket 00–96. We amend the rules to require satellite carriers to carry digital-only stations upon request in markets in which they are providing any local-into-local service pursuant to the statutory copyright license, and to require carriage of all high definition (''HD'') signals in a market in which any station's signals are carried in HD. The latter requirement will be phased in over a four year period. The final rule imposes the following requirements:

47 CFR Section 76.66(b)(1) states each satellite carrier providing, under section 122 of title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station, shall carry upon request the signals of all television broadcast stations located within that local market, subject to section 325(b) of title 47, United States Code, and other paragraphs in this section. Satellite carriers are required to carry digital-only stations upon request in markets in which the satellite carrier is providing any local-into-local service pursuant to the statutory copyright license.

47 CFR Section 76.66(d)(2)(vi) requires satellite carriers to notify all local stations in a market of their intent to launch HD carry-one, carry-all in that market at least 60 days before commencing such carriage.

Non-rule requirement: Satellite carriers must immediately commence carriage of the digital signal of a television station that ceases analog broadcasting prior to the February 17, 2009 transition deadline provided that the broadcaster notifies the satellite carrier on or before October 1, 2008 of the date on which they anticipate termination of their analog signal.

The following information collections requirements are also apart of this information collection and have not changed since last approved by OMB:

47 CFR Section 76.66(b)(2) requires a satellite carrier that offers multichannel video programming distribution service in the United States to more than 5,000,000 subscribers shall, no later than December 8, 2005, carry upon request the signal originating as an analog signal of each television broadcast station that is located in a local market in Alaska or Hawaii; and shall, no later than June 8, 2007, carry upon request the signals originating as digital signals of each television broadcast station that is located in a local market in Alaska or Hawaii. Such satellite carrier is not required to carry the signal originating as analog after commencing carriage of digital signals on June 8, 2007. Carriage of signals originating as digital signals of each television broadcast station that is located in a local market in Alaska or Hawaii shall include the entire free over-the-air signal, including multicast and high definition digital signals.

47 CFR Section 76.66(c)(3) requires that a commercial television station notify a satellite carrier in writing whether it elects to be carried pursuant to retransmission consent or mandatory consent in accordance with the established election cycle.

47 CFR Section 76.66(c)(5) requires that a noncommercial television station must request carriage by notifying a satellite carrier in writing in accordance with the established election cycle.

47 CFR Section 76.66(c)(6) requires a commercial television broadcast station located in a local market in a noncontiguous state to make its retransmission consent-mandatory carriage election by October 1, 2005, for carriage of its signals that originate as analog signals for carriage commencing on December 8, 2005 and ending on December 31, 2008, and by April 1, 2007 for its signals that originate as digital signals for carriage commencing on June 8, 2007 and ending on December 31, 2008. For analog and digital signal carriage cycles commencing after December 31, 2008, such stations shall follow the election cycle in 47 CFR Section 76.66(c)(2) and 47 CFR Section 76.66(c)(4). A noncommercial television broadcast station located in a local market in Alaska or Hawaii must request carriage by October 1, 2005, for carriage of its signals that originate as an analog signal for carriage commencing on December 8, 2005 and ending on December 31,

2008, and by April 1, 2007 for its signals that originate as digital signals for carriage commencing on June 8, 2007 and ending on December 31, 2008. Moreover, Section 76.66(c) requires a commercial television station located in a local market in a noncontiguous state to provide notification to a satellite carrier whether it elects to be carried pursuant to retransmission consent or mandatory consent.

47 CFR Section 76.66(d)(1)(ii) states an election request made by a television station must be in writing and sent to the satellite carrier's principal place of business, by certified mail, return receipt requested.

47 CFR Section 76.66(d)(1)(iii) states a television station's written notification shall include the:

(A) Station's call sign;

(B) Name of the appropriate station contact person;

(C) Station's address for purposes of receiving official correspondence;

(D) Station's community of license;

(E) Station's DMA assignment; and

(F) For commercial television stations, its election of mandatory carriage or retransmission consent.

47 CFR Section 76.66(d)(1)(iv) states within 30 days of receiving a television station's carriage request, a satellite carrier shall notify in writing: (A) Those local television stations it will not carry, along with the reasons for such a decision; and (B) those local television stations it intends to carry.

47 CFR Section 76.66(d)(2)(i) states a new satellite carrier or a satellite carrier providing local service in a market for the first time after July 1, 2001, shall inform each television broadcast station licensee within any local market in which a satellite carrier proposes to commence carriage of signals of stations from that market, not later than 60 days prior to the commencement of such carriage.

(A) Of the carrier's intention to launch local-into-local service under this section in a local market, the identity of that local market, and the location of the carrier's proposed local receive facility for that local market;

(B) Of the right of such licensee to elect carriage under this section or grant retransmission consent under section 325(b);

(C) That such licensee has 30 days from the date of the receipt of such notice to make such election; and

(D) That failure to make such election will result in the loss of the right to demand carriage under this section for the remainder of the 3-year cycle of carriage under section 325.

47 CFR Section 76.66(d)(2)(ii) states satellite carriers shall transmit the notices required by paragraph (d)(2)(i) of this section via certified mail to the address for such television station licensee listed in the consolidated database system maintained by the Commission.

47 CFR Section 76.66(d)(2)(iii) requires a satellite carrier with more than five million subscribers to provide a notice as required by 47 CFR Section 76.66(d)(2)(i) and 47 CFR Section 76.66(d)(2)(ii) to each television broadcast station located in a local market in a noncontiguous state, not later than September 1, 2005 with respect to analog signals and a notice not later than April 1, 2007 with respect to digital signals; provided, however, that the notice shall also describe the carriage requirements pursuant to Section 338(a)(4) of Title 47, United States Code, and 47 CFR Section 76.66(b)(2).

47 CFR Section 76.66(d)(2)(iv) requires that a satellite carrier shall commence carriage of a local station by the later of 90 days from receipt of an election of mandatory carriage or upon commencing local-into-local service in the new television market.

47 CFR Section 76.66(d)(2)(v) states within 30 days of receiving a local television station's election of mandatory carriage in a new television market, a satellite carrier shall notify in writing: Those local television stations it will not carry, along with the reasons for such decision, and those local television stations it intends to carry.

47 CFR Section 76.66(d)(3)(ii) states a new television station shall make its election request, in writing, sent to the satellite carrier's principal place of business by certified mail, return receipt requested, between 60 days prior to commencing broadcasting and 30 days after commencing broadcasting. This written notification shall include the information required by paragraph (d)(1)(iii) of this section.

47 CFR Section 76.66(d)(3)(iv) states within 30 days of receiving a new television station's election of mandatory carriage, a satellite carrier shall notify the station in writing that it will not carry the station, along with the reasons for such decision, or that it intends to carry the station.

47 CFR Section 76.66(d)(5)(i) states beginning with the election cycle described in § 76.66(c)(2), the retransmission of significantly viewed signals pursuant to § 76.54 by a satellite carrier that provides local-into-local service is subject to providing the notifications to stations in the market pursuant to paragraphs (d)(5)(i) (A) and (B) of this section, unless the satellite carrier was retransmitting such signals as of the date these notifications were due.

(A) In any local market in which a satellite carrier provided local-into-local service on December 8, 2004, at least 60 days prior to any date on which a station must make an election under paragraph (c) of this section, identify each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the next election cycle and the communities into which the satellite carrier reserves the right to make such retransmissions;

(B) In any local market in which a satellite carrier commences local-into-local service after December 8, 2004, at least 60 days prior to the commencement of service in that market, and thereafter at least 60 days prior to any date on which the station must thereafter make an election under § 76.66(c) or (d)(2), identify each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the next election cycle.

47 CFR Section 76.66(f)(3) states except as provided in 76.66(d)(2), a satellite carrier providing local-into-local service must notify local television stations of the location of the receive facility by June 1, 2001 for the first election cycle and at least 120 days prior to the commencement of all election cycles thereafter.

47 CFR Section 76.66(f)(4) states a satellite carrier may relocate its local receive facility at the commencement of each election cycle. A satellite carrier is also permitted to relocate its local receive facility during the course of an election cycle, if it bears the signal delivery costs of the television stations affected by such a move. A satellite carrier relocating its local receive facility must provide 60 days notice to all local television stations carried in the affected television market.

47 CFR Section 76.66(h)(5) states a satellite carrier shall provide notice to its subscribers, and to the affected television station, whenever it adds or deletes a station's signal in a particular local market pursuant to this paragraph.

47 CFR 76.66(m)(1) states whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under this section, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier failed to comply with such obligations.

47 CFR 76.66(m)(2) states the satellite carrier shall, within 30 days after such written notification, respond in writing to such notification and comply with

such obligations or state its reasons for believing that it is in compliance with such obligations.

47 CFR 76.66(m)(3) states a local television broadcast station that disputes a response by a satellite carrier that it is in compliance with such obligations may obtain review of such denial or response by filing a complaint with the Commission, in accordance with § 76.7 of title 47, Code of Federal Regulations. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.

47 CFR 76.66(m)(4) states the satellite carrier against which a complaint is filed is permitted to present data and arguments to establish that there has been no failure to meet its obligations under this section.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–15851 Filed 7–11–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 8, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Pursuant to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 12, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Interested parties may submit all PRA comments by e-mail or U.S. mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at 202–418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0519.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, CG Docket No. 02–278.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions.

Number of Respondents and Responses: 49,397 respondents; 135,607,383 responses.

Estimated Time per Response: 0.004 hours (15 seconds)—2.25 hours (average per response).

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits; the statutory authority for the information collection requirements is found in the Telephone Consumer Protection Act of 1991 (TCPA), Public Law 102–243, December 20, 1991, 105 Stat. 2394, which added Section 227 of the Communications Act of 1934, [47 U.S.C. 227] Restrictions on the Use of Telephone Equipment.

Total Annual Burden: 720,281 hours.

Total Annual Costs: $4,360,500.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries.''

Privacy Impact Assessment: Yes. The Privacy Impact Assessment was completed on June 28, 2007. It may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.*

Needs and Uses: The reporting requirements included under this OMB Control Number 3060–0519 enable the Commission to gather information regarding violations of the Do-Not-Call Implementation Act (Do-Not-Call Act). If the information collection was not conducted, the Commission would be unable to track and enforce violations of the Do-Not-Call Act. The Do-Not-Call rules provide consumers with several options for avoiding most unwanted telephone solicitations. This national do-not-call registry supplements the current company-specific do-not-call rules for those consumers who wish to continue requesting that particular companies not call them. Any company, which is asked by a consumer, including an existing customer, not to call again must honor that request for five (5) years.

However, a provision of the Commission's rules allows consumers to give specific companies permission to call them through an express written agreement. Nonprofit organizations, companies with whom consumers have an established business relationship, and calls to persons with whom the telemarketer has a personal relationship are exempt from the ''do-not-call'' requirements.

On September 21, 2004, the Commission released the *Safe Harbor Order* establishing a limited safe harbor in which persons will not be liable for placing autodialed and prerecorded message calls to numbers ported from a wireline service within the previous 15 days. The Commission also amended its existing national do-not-call registry safe harbor to require telemarketers to scrub their lists against the do-not-call database every 31 days.

On December 4, 2007, the Commission released the *DNC NPRM* seeking comment on its tentative conclusion that registrations with the Registry should be honored indefinitely, unless a number is disconnected or reassigned or the consumer cancels his registration

On June 17, 2008, the Commission released a *Report and Order* in CG Docket No. 02–278, FCC 08–147, amending the Commission's rules under the Telephone Consumer Protection Act (TCPA) to require sellers and/or telemarketers to honor registrations with the National Do-Not-Call Registry so that registrations will not automatically expire based on the current five year registration period. Specifically, the Commission modifies § 64.1200(c)(2) of its rules to require sellers and/or

telemarketers to honor numbers registered on the Registry indefinitely or until the number is removed by the database administrator or the registration is cancelled by the consumer.

In accordance with the Do-Not-Call Improvement Act of 2007, the Commission extends this requirement indefinitely to minimize the inconvenience to consumers of having to re-register their preferences not to receive telemarketing calls and to further the underlying goal of the National Registry to protect consumer privacy rights.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–16003 Filed 7–11–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Communications Commission En Banc Hearing and Conference on Overcoming Barriers to Communications Financing

ACTION: Notice of public meeting.

SUMMARY: This notice advises interested persons that the Federal Communications Commission will hold an *En Banc* Hearing and Conference on Overcoming Barriers to Communications on July 29, 2008. Networking opportunities will be provided for attendees at a breakout session.

DATES: Meeting is on July 29, 2008; *En Banc* and Conference held from 1 p.m. to 4 p.m. with a breakout session from 4 p.m. to 6 p.m.

ADDRESSES: The hearing and conference are located at Barnard College, 3009 Broadway, (at 117th Street) New York, NY 10027, in the James Room, 4th Floor, Barnard Hall.

SUPPLEMENTARY INFORMATION: The purpose of the hearing and conference is to enhance the knowledge of the Commission and attendees about: (i) The present state of capital markets as those markets impact ownership diversity in the media and telecom industries and, particularly, the success of minorities and women entrepreneurs; (ii) how financing is secured for new, diverse, resource-limited ventures, focusing on actual problems that have been encountered by women and minorities attempting to secure financing for media and telecom deals; and (iii) potential ways the Commission can help facilitate financing opportunities for minorities and women. Immediately following the *En Banc* hearing, there will be a breakout session where attendees will have an opportunity to meet with representatives of potential financing sources.

FOR FURTHER INFORMATION CONTACT: Barbara Kreisman, Chief, Video Division, (202) 418–1600 or e-mail: *Barbara.kreisman@fcc.gov* Members of the general public may attend the meeting and the FCC will attempt to accommodate as many people as possible.

Reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division.

[FR Doc. E8–15997 Filed 7–11–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2869]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

June 25, 2008.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents 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 these petitions must be filed by July 29, 2008. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to oppositions must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Amendment of the Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3–17.7 GHz Frequency Band and at the 17.7–17.8 GHz Frequency Band Internationally, and at the 24.75–25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3–17.8 GHz Frequency Band (IB Docket No. 06–123).

cc: On March 13, 2008, DIRECTV, Inc. filed a partial withdrawal of Petition for Reconsideration, IB Docket No. 06–123. DIRECTV no longer seeks reconsideration with respect to the amendment of footnote US402, and accordingly withdraws that portion of its petition.

Number of Petitions Filed: 2

Subject: In the Matter of Promoting Diversification of Ownership in the Broadcasting Services (MB Docket No. 07–294).

2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 (MB Docket No. 06–121).

2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act 1996 (MB Docket No. 02–277).

Cross-Ownership of Broadcast Stations and Newspapers (MM Docket No. 01–235).

Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets (MM Docket No. 01–317).

Definition of Radio Markets (MM Docket No. 00–244).

Ways to Further Section 257 Mandate and to Build on Earlier Studies (MB Docket No. 04–228).

Number of Petitions Filed: 2

Subject: In the Matter of Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands (WT Docket No. 03–66)

Number of Petitions Filed: 2

Marlene H. Dortch,

Secretary.

[FR Doc. E8–15840 Filed 7–11–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY:

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed 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; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before September 12, 2008.

ADDRESSES: You may submit comments, identified by R*egulation M*, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer 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: A copy of the PRA OMB submission including, the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports

Report title: The Recordkeeping and Disclosure Requirements in Connection with Regulation M (Consumer Leasing).

Agency form number: Reg M.

OMB control number: 7100–0202.

Frequency: On occasion.

Reporters: Consumer lessors.

Annual reporting hours: Disclosures, 533 hours; and advertising, 40 hours.

Estimated average hours per response: Disclosures, 6.5 minutes; and advertising, 25 minutes.

Number of respondents: 24.

General description of report: This information collection is mandatory (sections 105(a) and 187 of TILA (15 U.S.C. 1604(a) and 1667f)) and is not given confidential treatment.

Abstract: The Consumer Leasing Act and Regulation M are intended to provide consumers with meaningful disclosures about the costs and terms of leases for personal property. The disclosures enable consumers to compare the terms for a particular lease with those for other leases and, when appropriate, to compare lease terms with those for credit transactions. The act and regulation also contain rules about advertising consumer leases and limit the size of balloon payments in consumer lease transactions.

The information collection pursuant to Regulation M is triggered by specific events. All disclosures must be provided to the lessee prior to the consummation of the lease and when the availability of consumer leases on particular terms is advertised.

Board of Governors of the Federal Reserve System, July 9, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–15900 Filed 7–11–08; 8:45 am]

BILLING CODE 6210–01–P

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 July 29, 2008.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Christopher James Polino, to control at least 15 percent of the voting shares of Davis Trust Financial Corporation, and thereby acquire shares of Davis Trust Company, all of Elkins, West Virginia.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Brian K. Solsrud, Minneapolis, Minnesota; Gregory A. Solsrud, Dunwoody, Georgia; Corinne E. Solsrud, Mosinee, Wisconsin; and Rachel A. Solsrud Goodell, Augusta, Wisconsin, individually and as a group acting in concert to acquire control of Kimberly Leasing Corporation, Augusta, Wisconsin, and thereby indirectly acquire control of Unity Bank, Rush City, Minnesota.

2. Noah Wynter Wilcox, to join a group acting in concert with Steven Monroe Wilcox, to acquire control of Wilcox Bancshares, Inc., and thereby indirectly acquire control of Grand Rapids State Bank, all of Grand Rapids, Minnesota.

Board of Governors of the Federal Reserve System, July 9, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–15936 Filed 7–11–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 8, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Hometown Community Bancorp, Inc., and Hometown Community Bancorp Employee Stock Ownership Plan and Trust, both of Morton, Illinois, to merge with Alpha Financial Group, Inc., and Alpha Financial Group, Inc. Employee Stock Ownership Plan, and thereby indirectly acquire Alpha Community Bank, all of Toluca, Illinois.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Summit Banking Company, to become a bank holding company by acquiring 100 percent of Summit Bank, both of Burlington, Washington.

Board of Governors of the Federal Reserve System, July 9, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–15937 Filed 7–11–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Proposal to Rescind FTC Guidance Concerning the Current Cigarette Test Method

AGENCY: Federal Trade Commission

ACTION: Notice

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is proposing to rescind its guidance that it is generally not a violation of the FTC Act to make factual statements of the tar and nicotine yields of cigarettes when statements of such yields are supported by testing conducted pursuant to the Cambridge Filter Method, also frequently referred to as ''the FTC Test Method.'' If it withdraws this guidance, advertisers should not use terms such as ''per FTC Method'' or other phrases that state or imply FTC endorsement or approval of the Cambridge Filter Method or other machine-based test methods. The Commission seeks public comments on its proposal.

DATES: Comments must be submitted on or before August 12, 2008.

ADDRESSES: Interested parties are invited to submit comments. Comments should refer to ''Cigarette Test Method, [P944509]'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex L), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as described below. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.''[1]

Comments filed in electronic form should be submitted by following the instructions on the web-based form at (*https://secure.commentworks.com/ftc-CigaretteTestMethod*). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the (*https://secure.commentworks.com/ftc-CigaretteTestMethod*) weblink. If this Notice appears at *www.regulations.gov*, you may also file an electronic comment through that web site. The Commission will consider all comments that regulations.gov forwards to it.

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC web site, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at (*http://www.ftc.gov/ftc/privacy/htm*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Rosemary Rosso, Senior Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326-2174.

SUPPLEMENTARY INFORMATION: Cigarette yields for tar, nicotine, and carbon monoxide are currently measured by the Cambridge Filter Method, which has been commonly referred to as ''the FTC Method.'' For some time, the Commission has been concerned that the machine-measured yields determined by the Cambridge Filter Method may be misleading to individual consumers who rely on the yields as indicators of the amount of tar, nicotine, and carbon monoxide they actually will get from smoking a particular cigarette. In fact, the current yields tend to be relatively poor indicators of tar, nicotine, and carbon monoxide exposure, and do not provide a good basis for comparison among cigarettes. Accordingly, the Commission proposes to withdraw its guidance, announced in 1966, indicating that factual statements of tar and nicotine yields based on the Cambridge Filter Method generally will not violate the FTC Act. If the Commission withdraws this guidance, advertisers should not use terms such as ''per FTC Method'' or other phrases that state or imply FTC endorsement or approval of the Cambridge Filter Method or other machine-based test methods. The Commission invites public comment on its proposal.

I. BACKGROUND

On March 25, 1966, the Commission informed the major cigarette manufacturers that factual statements of the tar and nicotine content of the mainstream smoke of cigarettes would not be in violation of legal provisions administered by the FTC:

> so long as: (1) no collateral representations (other than factual statements of tar and nicotine content of cigarettes offered for sale to the public) are made, expressly or by implication, as to reduction or elimination of health hazards, and (2) the statement of tar and nicotine content is supported by adequate records of tests conducted in accordance with the Cambridge Filter Method.[2]

Importantly, the 1966 guidance only addresses simple factual statements of tar and nicotine yields. It does not apply to other conduct or express or implied representations, even if they concern tar and nicotine yields. Thus, deceptive claims about tar and nicotine yields or health risks are still subject to the full force of the Commission's jurisdiction. *See, e.g., FTC v. Brown & Williamson Tobacco Corp.*, 778 F. 2d 35 (D.C. Cir. 1985); *American Tobacco Co.*, 119 F.T.C. 3 (1995). Moreover, the Commission's 1966 guidance does not *require* companies to state the tar and nicotine yields of their cigarettes in their advertisements or on product labels. Rather, it sets forth the type of substantiation the Commission would deem adequate to support statements of tar and nicotine yields *if* cigarette companies choose to make such statements.

From the outset, cigarette testing under the Cambridge Filter Method was intended to produce uniform, standardized data about the tar and nicotine yields of mainstream cigarette smoke, *not* to replicate actual human smoking. Because no known test could accurately replicate human smoking, the FTC believed that the most important objective was to ensure that cigarette companies could present tar and nicotine information to the public based on a standardized method that would allow comparisons among cigarettes. In 1966, most public health officials believed that reducing the amount of ''tar'' in a cigarette could reduce a smoker's risk of lung cancer. Therefore, it was thought that giving consumers uniform and standardized information about the tar and nicotine yields of cigarettes would help smokers make informed decisions about the cigarettes they smoked.[3]

During the 40 years since the Commission announced this guidance, machine-measured tar and nicotine yields of cigarettes have decreased dramatically. In 1968, for example, only 2% of all cigarettes had machine-measured yields of 15 mg or less. Today, over 85% of all cigarettes sold have machine-measured yields of 15 mg or less.

Despite these dramatic decreases in machine-measured yields, the Commission has been concerned for some time that the current test method may be misleading to individual consumers who rely on the ratings it produces as indicators of the amount of tar and nicotine they actually will get from their cigarettes, and who use this information as a basis for comparison when choosing which cigarettes they smoke. In fact, the current yields tend to be relatively poor predictors of tar and nicotine exposure. This is primarily due to smoker compensation—*i.e.*, the tendency of smokers of lower-rated cigarettes to take bigger, deeper, or more frequent puffs, or to otherwise alter their smoking behavior in order to obtain the dosage of nicotine they need. Such compensatory behavior in the way people smoke and changes in cigarette design that facilitate compensation can have significant effects on the amount of tar, nicotine, and carbon monoxide one gets from any particular cigarette.

Concerns about the machine-based Cambridge Filter Method became a substantial issue in the 1990s because of changes in modern cigarette design and due to a better understanding of the nature and effects of compensatory smoking behavior.[4]

[2] News Release of the Federal Trade Commission (Mar. 25, 1966) (reciting the text of identical letters sent to the major cigarette manufacturers and the Administrator of The Cigarette Advertising Code, Inc.). The Cambridge Filter Method determines the relative yields of individual cigarettes by ''smoking'' them in a standardized fashion, according to a pre-determined protocol, on a machine. The machine is calibrated to take one puff of 2-seconds duration and 35 ml. volume every minute, and to smoke the cigarettes to a specified length.

[3] When the test method was adopted, the public health community believed that ''[t]he preponderance of scientific information strongly suggests that the lower the tar and nicotine content of cigarette smoke, the less harmful would be the effect.'' U.S. Dept. of Health and Human Services, *The Health Consequences of Smoking: The Changing Cigarette* 1(1981) (quoting a 1966 Public Health Service statement).

[4] To address these concerns, in 1994, the Commission, along with Congressman Henry Waxman, asked the National Cancer Institute (''NCI'') to convene a consensus conference to address cigarette testing issues. That conference took place in December 1994. *Smoking and Tobacco Control Monograph 7: The FTC Cigarette Test Method for Determining Tar, Nicotine, and Carbon Monoxide Yields of U.S. Cigarettes: Report of the NCI Expert Committee,* National Institutes of Health, National Cancer Institute (1996).

In 1997, the Commission published a **Federal Register** Notice proposing certain changes to the test method in accordance with recommendations

Continued

Today, the consensus of the federal health agencies and the scientific community is that machine-based measurements of tar and nicotine yields using the Cambridge Filter Method ''do not offer smokers meaningful information on the amount of tar and nicotine they will receive from a cigarette, or on the relative amounts of tar and nicotine exposure they are likely to receive from smoking different brands of cigarettes.''[5]

II. PROPOSAL TO RESCIND COMMISSION GUIDANCE CONCERNING FACTUAL STATEMENTS OF TAR AND NICOTINE YIELDS

The Commission proposes to rescind its guidance that generally permits factual statements about the tar and nicotine yields of a cigarette when such statements are supported by the Cambridge Filter Method.[6] If it rescinds its guidance, advertisers should not use terms such as ''per FTC Method'' or other phrases that state or imply FTC endorsement or approval of the Cambridge Filter Method or other machine-based test methods.

A. Tar and Nicotine Statements Based on Cambridge Test Method

Given the serious limitations of the existing test method, the Commission's rationale for its 1966 guidance generally permitting factual tar and nicotine statements based on this methodology no longer appears valid. The Commission is concerned that statements based on the Cambridge Filter Method may be confusing or misleading to consumers who believe they will get proportionately less of the harmful substances from cigarette smoke by smoking relatively lower-yield cigarettes than from higher-yield cigarettes. Thus, the Commission proposes to rescind its guidance that generally permits claims based upon a single standardized machine-based test method — the Cambridge Filter Method. Upon withdrawal of this guidance, factual statements about tar and nicotine yields would be evaluated the same as any other advertising or marketing claims subject to the Commission's jurisdiction: the statements could be made as long as they were truthful, non-misleading, and adequately substantiated.

B. Claims Stating or Implying FTC Endorsement or Approval

Additionally, the Commission believes it should not permit claims that consumers are likely to interpret as FTC approval, ownership, or endorsement of the Cambridge Filter Method. Thus, if the Commission withdraws the guidance, advertisers should not use terms such as ''per FTC Method'' or other phrases that state or imply FTC approval, ownership, or endorsement of the Cambridge Filter Method or other machine-based test methods.

III. REQUEST FOR COMMENTS AND RESPONSES TO SPECIFIC QUESTIONS

The Commission is seeking comment on the following specific questions and on any other issues relevant to the policies stated above in this Notice:

1. Should the Commission rescind its guidance that generally permits factual statements about tar and nicotine yields when such statements are based on a single standardized test method—the Cambridge Filter Method?

2. What effects, if any, would the Commission's proposal likely have on consumers' purchases of cigarettes and/or their smoking behavior? Will these changes be likely to affect smoking intensity, brand choice, and/or the decision whether to quit smoking, and if so, how? How else would the proposal likely affect consumers?

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E8–16006 Filed 7–11–08: 8:45 am]

BILLING CODE 6750–01–S

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from the NCI consensus conference. 42 Fed. Reg. 48,158 (Sept. 12, 1997). In response, the cigarette companies argued in favor of retaining the existing test method. Public health agencies asked the Commission to postpone its proposed modifications until a broader review of unresolved scientific issues surrounding the system could be addressed.

In 1998, the Commission responded to the public health agencies' concerns by formally requesting that the Department of Health and Human Services (''DHHS'') conduct a review of the FTC's cigarette test method. Letter from Donald S. Clark, Secretary, Federal Trade Commission to the Honorable Donna E. Shalala, Secretary, Department of Health and Human Services (Nov. 19, 1998). In particular, the Commission asked the DHHS to provide recommendations as to whether the testing system should be continued, and, if it should be continued, what specific changes should be made in order to correct the limitations previously identified by the NCI and other public health officials.

The DHHS provided its initial response to the FTC in an NCI Report concerning the public health effects of low tar cigarettes. *Smoking and Tobacco Control Monograph 13: Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine,* National Institutes of Health, National Cancer Institute (2001) (''Monograph 13''). The national panel of scientific experts assembled for the review concluded that the existing scientific evidence, including patterns of mortality from smoking-caused diseases, does not indicate a benefit to public health from changes in cigarette design and manufacturing over the past 50 years. Monograph 13 at 10. Monograph 13 also concluded that measurements of tar and nicotine as measured by the Cambridge Filter Method do not offer meaningful information to consumers. *Id.*

When it announced the release of Monograph 13, the NCI noted the FTC's previous request, and indicated that it would work with its sister science-based agencies at DHHS to determine what changes needed to be made to the testing method. National Cancer Institute, ''Low-Tar Cigarettes: Evidence Does Not Indicate a Benefit to Public Health,'' *News from the NCI* (Nov. 27, 2001). The FTC understands that representatives from agencies within DHHS are continuing to look into these issues.

In light of its concerns, the Commission for more than a decade has recommended that Congress grant authority over cigarette testing to one of the federal government's science-based public health agencies. *See, e.g.,* Prepared Statement of the Federal Trade Commission Before the Committee on Energy, Commerce, and Transportation, United States Senate (Nov. 13, 2007).

[5] Testimony of Cathy Backinger, Ph.D., Acting Chief, Tobacco Control Research Branch, National Cancer Institute, presented before the Committee on Science, Commerce and Transportation, U.S. Senate (Nov. 13, 2007). *See also* Testimony of Jonathan M. Samet, M.D., M.S., Professor and Chair, Dept. of Epidemiology, Johns Hopkins Bloomberg School of Public Health, presented before the Committee on Science, Commerce and Transportation, U.S. Senate (Nov. 13, 2007); *Smoking and Tobacco Control Monograph 13: Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine,* National Institutes of Health, National Cancer Institute (2001) .

[6] Cigarette manufacturers have adopted descriptive terms such as ''light'' and ''ultra low'' apparently based on ranges of machine-measured tar yields. The Commission has not defined those terms, nor provided guidance or authorization as to the use of descriptors. Because there is no Commission enforcement policy with respect to the use of descriptors, this proposal does not address the use of descriptors.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control (ACIPC)

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 subcommittee and committee meetings.

Name: Science and Program Review Subcommittee (SPRS).

Time and Date: 1 p.m.–2 p.m., July 30, 2008.

Place: Meeting will be conducted via telephone conference. 4770 Buford Highway, NE., Building 106, 1st Floor, Room 1C, Atlanta, Georgia 30341–3724.

Status: Closed: 1 p.m.–2 p.m., July 30, 2008.

Purpose: The Science and Program Review Subcommittee (SPRS) provides advice on the needs, structure, progress and performance of programs of the National Center for Injury Prevention and Control (NCIPC).

Matters To Be Discussed: The subcommittee will meet July 30, 2008, to provide a secondary review of, discuss, and evaluate the individual research grant and cooperative agreement applications submitted in response to one Fiscal Year 2008 Requests for Applications (RFAs)

related to the following individual research announcements: CD–08–001, Elimination of Health Disparities through Translation Research (R18). The applications being reviewed include information of a confidential nature, including personal and financial information concerning individuals associated with the applications.

Following this meeting, the voting members of ACIPC will meet via teleconference to vote on the recommendations of the SPRS regarding the RFAs. This call will take place on July 30, 2008, from 2 p.m.–3 p.m.

Name: Advisory Committee for Injury Prevention and Control.

Time and Date: 2 p.m.–3 p.m., July 30, 2008.

Place: Meeting will be conducted via telephone conference. 4770 Buford Highway, NE., Building 106, 1st Floor, Room 1C, Atlanta, GA 30341–3724.

Status: Closed: 2 p.m.–3 p.m., July 30, 2008.

Purpose: The committee advises and makes recommendations to the Secretary, Department of Health and Human Services, the Director, Centers for Disease Control and Prevention, and the Director, National Centers for Injury Prevention and Control (NCIPC) regarding feasible goals for the prevention and control of injury. The committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control.

Matters To Be Discussed: Agenda items for the open portion include the call to order and introductions and request for public comments. Beginning at 2:15 p.m., July 30, 2008, through 3 p.m., during the closed portion, the Committee will vote on the results of the secondary review. This portion of the meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and (b), title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC pursuant to Pub L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Ms. Amy Harris, Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE., M/S F–63, Atlanta, Georgia 30341–3724, telephone (770) 488–4936. The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 8, 2008.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–15924 Filed 7–11–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention: Teleconference

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 Advisory Committee meeting.

Name: Advisory Committee to the Director (ACD), CDC teleconference.

Time and Date: 1 p.m.–2:30 p.m., August 07, 2008.

Place: The conference call will originate at the Centers for Disease Control and Prevention, 1600 Clifton Road, Atlanta, GA 30333. Please see *Supplementary Information* for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: The committee will provide advice to the CDC Director on strategic and other broad issues facing CDC.

Matters to be Discussed: The two major discussions that will be covered during the conference call are healthiest nation and globalization. Agenda items are subject to change as priorities dictate.

Supplementary Information: This conference call is scheduled to begin at 1 p.m., Eastern Standard Time. To participate in the conference call, please dial 1–888–843–6162 and reference passcode 1224940.

For Further Information Contact: Priscilla Patin, Management and Program Analyst, Office of the Director, CDC, 1600 Clifton Road, NE., M/S D–14, Atlanta, Georgia 30333. Telephone 404–639–7000.

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: July 8, 2008.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–15984 Filed 7–11–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Genomic Applications in Practice and Prevention: Translation Programs in Education, Surveillance, and Policy; Program Announcement (PA) #GD08–801

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: 3 p.m.–7 p.m., July 29, 2008 (Closed). 8 a.m.–5 p.m., July 30, 2008 (Closed).

Place: Grand Hyatt Atlanta, 3300 Peachtree Road, NE., Atlanta, GA 30305, Telephone: (404) 237–1234.

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 applications received in response to ''Genomic Applications in Practice and Prevention: Translation Programs in Education, Surveillance, and Policy; PA # GD08–801.''

Contact Person for More Information: Rodolfo Valdez, PhD, Epidemiologist, CDC, 1600 Clifton Road, NE., Mailstop K89, Atlanta, GA 30333, Telephone (770) 488–8391.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 8, 2008.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–15953 Filed 7–11–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Proposed Revision of Approved Collection; Comment Request; Responsibility of Applicants for Promoting Objectivity in Research for Which Public Health Service Funding Is Sought, 42 CFR Part 50, Subpart F and for Responsible Prospective Contractors, 45 CFR Part 94

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of the Director (OD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection:

Title: Responsibility of Applicants for Promoting Objectivity in Research for which Public Health Service Funding is Sought and for Responsible Prospective Contractors, 42 CFR Part 50, Subpart F, and 45 CFR Part 94.

Type of Information Collection Request: Revision of OMB No. 0925–0417, expiration date November 30, 2008.

Need and Use of the Information Collection: This is a request for OMB Approval for the information collection and recordkeeping requirements contained in the final rule 42 CFR Part 50, Subpart F and related recordkeeping requirements regarding contractors in Responsible Prospective Contractors, 45 CFR Part 94. The purpose of these regulations is to promote objectivity in research by requiring institutions to establish standards to ensure that there is no reasonable expectation that the design, conduct, or reporting of research will be biased by a conflicting financial interest of an investigator.

Frequency of Response: On occasion.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; State, Local or tribal government.

Type of Respondents: Any public or private entity or organization. The annual reporting burden is as follows:

Estimated Number of Respondents: 67,860;

Estimated Number of Responses Per Respondent: 1.60;

Averaged Burden Hours per Response: 3.40.; and

Estimated Total Annual Burden Hours Requested: 220,280.

The annualized cost to the public is estimated at $8,120,000.

Operating Costs and/or maintenance costs are $4,633.00.

TABLE—ESTIMATES OF HOUR BURDEN

Type of respondents based on applicable section of regulation	Number of respondents	Frequency of response	Average burden hours per response	Annual hour burden
Reporting:				
Initial Reports under 42 CFR § 50.604(g)(2) or 45 CFR 94.4(g)(2) from Institutions	[i] 300	1	80	24000
Subsequent Reports under 42 CFR § 50.604(g)(2) or 45 CFR 94.4(g)(2) from Institutions	[ii] 40	1	2	80
Subsequent Reports under 42 CFR § 50.606(a) or 45 CFR 94.6 from Institutions	[iii] 20	1	10	200
Recordkeeping: Under 42 CFR § 50.604(e) or 45 CFR 94.4(e)—Institutional files	[iv] 25000	1	4	100000
Disclosure:				
Under 42 CFR § 50.604(a) or 45 CFR 94.4(a)—Institutions	[v] 2800	1	20	56000
Under 42 CFR § 50.604(c) or 45 CFR 94.4(c)—Investigators	[vi] 40000	1	1	40000
Totals	67860	.....	.....	220280

[i] Although not more than 300 reports of Financial Conflict of Interest are expected, the responding institutions will need to review all financial disclosures associated with PHS funding awards to determine whether any conflicts of interest exist. Thus, the total burden of 24,000 hours is based upon estimates that it will take on average 4/5 of an hour to review each of 30,000 financial disclosures associated with PHS funding awards. (30,000 × 48 (minutes per file) = 1,440,000 ÷ 60 minutes = 24,000 (total hours).

[ii] The burden for subsequent reports of conflicts (made during the 12-month period following the initial report) is significantly less, because we do not expect many additional reportable conflicts and there will be only a limited number of disclosures to review.

[iii] This burden was originally estimated in the 1995 Final Rule to be no more than 5 instances that the failure of an investigator to comply with the institution's FCOI policy has biased the design, conduct or reporting of the research. "Objectivity in Research, Final Rule" 60 Fed. Reg. 132 (July 11, 1995) pps. 35810–35819. This burden estimate, and others, was increased in 2002 "due to increased numbers of institutions and investigators."

[iv] Assumes 2500 institutions, 10 responses per year per institution.

[iv] Assumes 2500 institutions, 10 responses per year per institution.

[v] Assumes 2800 recipient institutions and 20 hours per institution informing each investigator of institutional policy.

[vi] The financial disclosure burden estimate is based upon an investigator figure of 40,000 with an average response time of 1 hour. The estimated number of investigators has not changed since the 2002 Information Collection Request associated with the Final Rule. These estimates are for the burden imposed by disclosure, reporting and recordkeeping requirements. Not all activities of institutions related to FCOI result from regulations.

Requests for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) 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; (2) The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed information collection; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on respondents, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information Contact: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Mikia Currie, Assistant Project Clearance Officer, Office of Extramural Research, (OER), Office of Policy for Extramural Research Administration, (OPERA), 6705 Rockledge Drive, Room 1198, Bethesda, MD 20892–7974, or call non-toll-free number 301–435–0941 or e-mail your request, including your address, to: *curriem@od.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: May 19, 2008.

Joe Ellis,

Director, Office of Policy of Extramural Research Administration, OER, National Institutes of Health.

[FR Doc. E8–15826 Filed 7–11–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Diabetes, Erectile Dysfunction and Cardiovascular Diseases.

Date: July 29, 2008.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38oz@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 3, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–15822 Filed 7–11–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3287–EM]

California; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of California (FEMA–3287–EM), dated June 28, 2008, and related determinations.

DATES: *Effective Date:* July 4, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of California is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of June 28, 2008.

Kern, Mariposa, Plumas, and Santa Barbara Counties for emergency protective measures, (Category B), limited to direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15976 Filed 7–11–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1771–DR]

Illinois Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Illinois (FEMA–1771–DR), dated June 24, 2008, and related determinations.

DATES: *Effective Date:* July 3, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Illinois is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 24, 2008.

Whiteside County for Individual Assistance.

Jersey County for Individual Assistance and Public Assistance.

Rock Island County for Individual Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program).

Calhoun County for Individual Assistance and Public Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program).

Adams, Clark, Coles, Crawford, Cumberland, Hancock, Henderson, Jasper, and Lawrence Counties for Public Assistance (already designated for Individual Assistance and emergency protective measures [Category

B], limited to direct Federal assistance, under the Public Assistance program).

Douglas, Edgar, and Winnebago Counties for Public Assistance (already designated for Individual Assistance).

Pike County for Public Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidential Declared Disaster Assistance to Individuals and Households—Other Needs, 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15974 Filed 7–11–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1763–DR]

Iowa; Amendment No. 13 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1763-DR), dated May 27, 2008, and related determinations.

DATES: *Effective Date:* July 7, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 27, 2008.

Clinton, Decatur, Dubuque, Greene, Keokuk, Pottawattamie, Van Buren, and Washington Counties for Individual Assistance (already designated for Public Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidential Declared Disaster Assistance to Individuals and Households—Other Needs, 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15972 Filed 7–11–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1757–DR]

Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1757–DR), dated May 19, 2008, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 19, 2008.

Ballard and Hickman Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidential Declared Disaster Assistance to Individuals and Households—Other Needs, 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15945 Filed 7–11–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1772–DR]

Minnesota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota (FEMA–1772–DR), dated June 25, 2008, and related determinations.

DATES: *Effective Date:* June 12, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 12, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially

Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15975 Filed 7–11–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1770–DR]

Nebraska; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–1770–DR), dated June 20, 2008, and related determinations.

DATES: *Effective Date:* July 3, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Nebraska is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 20, 2008.

Custer and Lancaster Counties for Individual Assistance (already designated for Public Assistance).

Cherry, Dundy, Greeley, Johnson, Morrill, Nemaha, and Valley Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15977 Filed 7–11–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1768–DR]

Wisconsin; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin (FEMA–1768–DR), dated June 14, 2008, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 14, 2008.

The counties of Calumet, Fond du Lac, Green Lake, Jefferson, Juneau, Kenosha, Marquette, Ozaukee, Racine, Rock, Sheboygan, Washington, and Waukesha for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–15971 Filed 7–11–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Notice of Immigration Pilot Program, File No. OMB–5. OMB Control No. 1615–0061.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 7, 2008, at 73 FR 25760 allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 13, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0061 in the subject box.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Notice of Immigration Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No form number. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The information collected will be used by USCIS to determine which regional centers should participate in the immigration pilot program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 40 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529, (202) 272–8377.

Dated: July 7, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–15991 Filed 7–11–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–600, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form N–600, Application for Certificate of Citizenship; OMB Control Number 1615–0057.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 9, 2008, at 73 FR 26405 allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 13, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0057 in the subject box.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Certificate of Citizenship.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–600, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the information on the form to make a determination that the citizenship eligibility requirements and conditions are met by the applicant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 88,500 responses at 1 hour and 35 minutes (1.583 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 140,095 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue,

Suite 3008, Washington, DC 20529, (202) 272–8377.

Dated: July 9, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–15993 Filed 7–11–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5191–N–16]

Notice of Proposed Information Collection: Comment Request; FHA-Insured Mortgage Loan Servicing Involving the Claims and Conveyance Process, Property Inspection/Preservation

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: September 12, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 402–2419 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: FHA-Insured Mortgage Loan Servicing Involving the Claims and Conveyance Process, Property Inspection/Preservation.

OMB Control Number, if applicable: 2502–0429.

Description of the need for the information and proposed use: FHA insurance is an important source of mortgage credit for low and moderate-income borrowers and their neighborhoods. It is essential that FHA maintain a healthy mortgage insurance fund through premiums charged the borrower by FHA along with Federal budget receipts generated from those premiums to support HUD's goals. Providing policy and guidance to the single family housing mortgage industry regarding changes in FHA's program is essential to protect the fund. The OMB information requests referred to below provide HUD's policy and guidance. This information collection request for OMB review seeks to combine the requirements of three existing OMB collections under this collection. The OMB collections are as follows; OMB collections 2502–0268 ''Request for Occupied Conveyance'', 2502–0349 ''Certified Eligibility for Adjustments for Damage or Neglect'' and 2502–0436 ''Mortgagee's Request for Extension of Time''.

Agency form numbers, if applicable: HUD–09519–A, Property Inspection Report, HUD–09539, Request for Occupied Conveyance, HUD–27011, Parts A, B, C, D, E, Single Family Application for Insurance Benefits, HUD–50002, Request to Exceed Cost Limits for Preservation and Protection, HUD–50012, Mortgagees Request for Extension of Time Requirements, HUD–91022, Mortgagee Notice of Foreclosure Sale.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 692,304, the number of respondents is 223, the number of responses is 614,728, the frequency of response is on occasion, and the burden hour per response is from less than a minute to 4 hours depending upon the activity.

Status of the proposed information collection: This is an existing collection (OMB 2502–0429) that will be revised.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 3, 2008.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E8–15919 Filed 7–11–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWSR8–2008–N0148; 1120–0008–0221–F2]

Incidental Take Permit for the Regency Centers Project in the City of Highland, San Bernardino County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: Regency Centers (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended. The Service is considering issuing a 3-year permit to the Applicant that would authorize take of the federally endangered San Bernardino kangaroo rat (*Dipodomys Merriami parvus;* ''SBKR''). The proposed permit would authorize the take of an individual SBKR. The Applicant needs the permit because take of SBKR could occur during the proposed construction of a commercial development on an 8.4-acre site in the City of Highland, San Bernardino County, California. The permit application includes the proposed Habitat Conservation Plan (Plan), which describes the proposed action and the measures that the Applicant would undertake to minimize and mitigate take of the SBKR.

DATES: Submit written comments on or before September 12, 2008.

ADDRESSES: Send written comments to Mr. Jim Bartel, Field Supervisor, Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, California 92011. You also may send comments by facsimile to (760) 918–0638.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Goebel, Assistant Field Supervisor [see **ADDRESSES**] or call (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of these documents for review by contacting the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address and at the San Bernardino County Libraries. Addresses for the San Bernardino County Libraries are: (1) 27167 Base Line, Highland, CA 92346; (2) 25581 Barton Rd, Loma Linda, CA 92354; (3) 1870 Mentone Boulevard, Mentone, CA 92359; and (4) 104 West Fourth Street, San Bernardino, CA 92415.

Background

Section 9 of the Act and Federal regulations prohibit the ''take'' of fish and wildlife species listed as endangered or threatened. Take of federally listed fish and wildlife is defined under the Act to include ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' The Service may, under limited circumstances, issue permits to authorize incidental take (i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22.

The Applicant is proposing development of commercial facilities on an 8.4-acre site. The site is located southeast of the intersection of State Route 30 and Fifth Street (State Route 330) in the City of Highland, San Bernardino County, California. The proposed project site is bordered on the west by vacant land that has been permitted for construction of commercial facilities, on the north by 5th Street, on the east by vacant land and a public storage facility, and on the south by a berm separating the site from the Plunge Creek flood control basins, aggregate operations, and the Santa Ana Wash.

Based on focused surveys and habitat assessments, 4.5 acres of the site are considered occupied by the SBKR. The Service has determined that the proposed development would result in incidental take of the SBKR. No other federally listed species are known to occupy the site.

To mitigate take of SBKR on the project site, the Applicant has purchased credits towards conservation in-perpetuity of thirteen (13) acres of conservation credits from the Cajon Creek Conservation Bank in eastern San Bernardino Valley. The conservation bank collects fees that fund a management endowment to ensure the permanent management and monitoring of sensitive species and habitats, including the SBKR.

National Environmental Policy Act

Proposed permit issuance triggers the need for compliance with the National Environmental Policy Act (NEPA). Accordingly, a draft NEPA document has been prepared. The Service is the Lead Agency responsible for compliance under NEPA. As NEPA lead agency, the Service is providing notice of the availability and is making available for public review the Environmental Assessment.

The Service's Environmental Assessment considers the environmental consequences of three alternatives, including: (1) The Proposed Project Alternative, which consists of issuance of the incidental take permit and implementation of the Plan; (2) the Alternate Site Layout Alternative, which consists of a reduced project footprint and conservation of SBKR within the proposed project site; and (3) the No Action Alternative, which would result in no impacts to SBKR and no conservation.

Public Review

The Service invites the public to review the Plan and Environmental Assessment during a 60-day public comment period (see **DATES**). 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.

This notice is provided pursuant to section 10(a) of the Act and the regulations for implementing NEPA, as amended (40 CFR 1506.6). We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If we determine that those requirements are met, we will issue a permit to the Applicant for the incidental take of the SBKR. We will make our final permit decision no sooner than 60 days from the date of this notice.

Dated: July 8, 2008.

Richard F. Kearney,

Acting Deputy Regional Director, California and Nevada Region, Sacramento, California.

[FR Doc. E8–16040 Filed 7–11–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2008–N0101; 80230–1265–0000–S3]

Ellicott Slough National Wildlife Refuge, Santa Cruz County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) intend to prepare a Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the Ellicott Slough National Wildlife Refuge located in Santa Cruz County of California. We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, we must receive your written comments by August 13, 2008.

ADDRESSES: Send your comments or requests for more information by any of the following methods.

E-mail: sfbaynwrc@fws.gov. Include ''Ellicott Slough CCP'' in the subject line of the message.

Fax: Attn: Winnie Chan, (510) 792–5828.

U.S. Mail: San Francisco Bay National Wildlife Refuge Complex, 9500 Thornton Avenue, Newark, California 94560.

In-Person Drop-off: You may drop off comments during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Winnie Chan, Refuge Planner, or Diane Kodama, Refuge Manager, at (510) 792–0222.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Ellicott Slough NWR in Santa Cruz County, CA.

This notice complies with our CCP policy to (1) Advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Congress established each unit of the National Wildlife Refuge System for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. We will be contacting identified stakeholders and individuals at this time for initial input. If you would like to meet with planning staff or would like to receive periodic updates, please contact us (see **ADDRESSES** section). We anticipate holding a public meeting once alternative management scenarios have been identified. At this time we encourage comments in the form of issues, concerns, ideas, and suggestions for the future management of Ellicott Slough NWR.

We will conduct the environmental review of this project in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et seq.); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Ellicott Slough National Wildlife Refuge

Ellicott Slough National Wildlife Refuge was established in 1975 pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1537) and the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3901b). The nearly 300-acre Ellicott Slough National Wildlife Refuge, located in Santa Cruz County, California, consists of three non-contiguous units within and adjacent to Ellicott Slough and associated watersheds. The Refuge was established to protect the endangered Santa Cruz long-toed salamander by supporting two of the twenty known breeding populations of the salamander. Due to the sensitivity of the habitat, the Refuge is closed to the public. Through this CCP process, we will determine whether any wildlife-dependent recreational opportunities should be made available to the public.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 7, 2008.

Ken McDermond,

Acting Regional Director, California and Nevada Region, Sacramento, California.

[FR Doc. E8–15916 Filed 7–11–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–210–5101–ER–D050, IDI–35183/NVN–84663]

Extension of Scoping Period for the Notice of Intent To Prepare an Environmental Impact Statement for the Proposed China Mountain Wind Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Extend Scoping Period for the Notice of Intent to Prepare an Environmental Impact Statement for the Proposed China Mountain Wind Project.

SUMMARY: The Bureau of Land Management (BLM) Jarbidge Field Office, Twin Falls District, Idaho, is extending the scoping period for the Environmental Impact Statement for the Proposed China Mountain Wind Project, located in the Jarbidge Foothills, southwest of Rogerson, Idaho, and west of Jackpot, Nevada. The EIS will be prepared in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701), as amended; the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), as amended; and the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508). This notice extends the public scoping process to identify relevant issues associated with the proposed project.

DATES: The scoping period is extended from June 21, 2008 to July 21, 2008. Comments received after that date will be considered to the extent practicable. Comments may be submitted using one of the methods listed below.

FOR FURTHER INFORMATION CONTACT: China Mountain Wind Project Manager, Jarbidge Field Office, 2536 Kimberly Road, Twin Falls, Idaho 83301, telephone (208) 732–7413.

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

- *Web Site: http://www.blm.gov/id/st/en/fo/jarbidge.html.*
- *E-mail: id_chinamtn_eis@blm.gov.*
- *Fax:* (208) 736–2375 or (208) 735–2076.
- *Mail:* Project Manager, China Mountain EIS, Jarbidge Field Office, 2536 Kimberly Road, Twin Falls, Idaho 83301.

Comments can also be hand delivered to the Jarbidge Field Office at the address above. Documents pertinent to this proposal may be examined at the Jarbidge Field Office.

Dated: June 30, 2008.

Rick Vander Voet,

Jarbidge Field Office Manager, Idaho Bureau of Land Management.

[FR Doc. E8–15999 Filed 7–11–08; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–952–08–1420–BJ, 14X1109]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: *Effective Dates:* Filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David D. Morlan, Chief, Branch of Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, NV 89520, 775–861–6541.

SUPPLEMENTARY INFORMATION:

1.The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on April 23, 2008:

The plat, in two sheets, representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 21 and certain metes-and-bounds surveys in section 21, Township 19 South, Range 60 East, Mount Diablo Meridian, Nevada, under Group No. 839, was accepted April 22, 2008.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

2. The Supplemental Plats of Survey of the following described lands were officially filed at the Nevada State Office, Reno, Nevada, on June 11, 2008.

The supplemental plat, showing amended lottings in sec. 4, T. 13 N., R. 32 E., Mount Diablo Meridian, Nevada, was accepted June 9, 2008.

The supplemental plat, in four sheets, showing amended lottings in sec. 5, T. 13 N., R. 32 E., Mount Diablo Meridian, Nevada, was accepted June 9, 2008.

The supplemental plat, in two sheets, showing amended lottings in sec. 8, T. 13 N., R. 32 E., Mount Diablo Meridian, Nevada, was accepted June 9, 2008.

The supplemental plat, in two sheets, showing amended lottings in sec. 9, T. 13 N., R. 32 E., Mount Diablo Meridian, Nevada, was accepted June 9, 2008.

These supplemental plats were prepared to meet certain administrative needs of the Kennecott Rawhide Mining Company and the Bureau of Land Management.

3. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: July 1, 2008.

David D. Morlan,

Chief Cadastral Surveyor, Nevada.

[FR Doc. E8–15912 Filed 7–11–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the American Museum of Natural History, New York, NY, that meets the definition of ''object of cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The cultural item is a wooden feast dish carved in the shape of a beaver. The dish is approximately 115 centimeters long, 35.5 centimeters wide, and 22 centimeters tall. The sides of the dish are decorated with carved formline designs; small faces are carved into the top of the beaver's head and tail and into each of the beaver's ears. The dish is painted in red and black and the upper rim is decorated with rows of inlaid shell. The rear portion of the dish was damaged and subsequently repaired.

At an unknown date, the beaver dish was acquired by Lieutenant George Thornton Emmons. In 1888, the American Museum of Natural History purchased the beaver dish from Lieutenant Emmons and accessioned it into its collection that same year.

The cultural affiliation of this item is Hutsnuwu Tlingit as indicated by museum records and by representatives of Kootznoowoo, Incorporated, and Central Council of the Tlingit & Haida Indian Tribes during consultation. Museum records and consultation with representatives of Kootznoowoo, Incorporated, and Central Council of the Tlingit & Haida Indian Tribes indicate that the beaver dish was damaged during the U.S. Navy's shelling of Angoon in 1882. Consultation evidence also indicates that the dish was one of only a few items to have survived this incident. This cultural item was claimed on behalf of the Deisheetaan Clan of Angoon for which it continues to have historical, traditional, and cultural importance.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the object of cultural patrimony and the Central Council of the Tlingit & Haida Indian Tribes.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, before August 13, 2008. Repatriation of the object of cultural patrimony to Central Council of the Tlingit & Haida Indian Tribes may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Angoon Community Association, Central Council of the Tlingit & Haida Indian Tribes, Kootznoowoo, Incorporated, and Sealaska Heritage Foundation.

Dated: June 17, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–15907 Filed 7–11–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Rochester Museum & Science Center, Rochester, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 300, of the intent to repatriate cultural items in the possession of the Rochester Museum & Science Center, Rochester, NY, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1956, human remains were removed from the Morrow Site (Hne 033), Town of Richmond, Ontario County, NY, by the Rochester Museum & Science Center. In 2000, a Notice of Inventory Completion was published in the **Federal Register** of November 21, 2000 (FR Doc 00–29811, pages 69963–69967) that included these human remains. After repatriation, six funerary objects associated with the human remains were found. Under NAGPRA, 43 CFR 10.2 (d)(2)(ii), the funerary objects are now considered to be unassociated funerary objects. The six unassociated funerary objects are potsherds.

Archeological investigations at the Morrow Site have identified occupations during the Middle and Late Woodland periods, as well as the post–European contact period. Based on site location and continuities of material culture as represented in other collections from the site, the human remains from the Morrow Site have been identified as Iroquois (Seneca), dated to A.D. 1750–1850.

Descendants of the Seneca are members of the Seneca Nation of New York, Seneca–Cayuga Tribe of Oklahoma, and Tonawanda Band of Seneca Indians of New York.

Officials of the Rochester Museum & Science Center have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the six cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial of a Native American individual. Officials of the Rochester Museum & Science Center also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Seneca Nation of New York, Seneca–Cayuga Tribe of Oklahoma, and Tonawanda Band of Seneca Indians of New York.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Gian Carlo Cervone, Senior Registrar, Rochester Museum & Science Center, 657 East Avenue, Rochester, NY 14607–2177, telephone (585) 271–4552 x310, before August 13, 2008. Repatriation of the unassociated funerary objects to the Seneca Nation of New York, Seneca–Cayuga Tribe of Oklahoma, and Tonawanda Band of Seneca Indians of New York may proceed after that date if no additional claimants come forward.

The Rochester Museum & Science Center is responsible for notifying the Cayuga Nation of New York; Oneida Nation of New York; Oneida Tribe of Wisconsin; Onondaga Nation of New York; Seneca Nation of New York; Seneca–Cayuga Tribe of Oklahoma; Saint Regis Mohawk Tribe, New York; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca Indians of New York; and Tuscarora Nation of New York that this notice has been published.

Dated: June 5, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–15909 Filed 7–11–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Seton Hall University Museum, Seton Hall University, South Orange, NJ; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Seton Hall University Museum, Seton Hall University, South Orange, NJ, that meet the definition of ''sacred objects'' and ''objects of cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects an error in the telephone number of the Seton Hall University Museum and adds an e-mail address. In the **Federal Register** of May 23, 2008 (FR Doc E–8–11572, Pages 30159–30160], paragraph 8 is corrected by substituting the following paragraph:

Representatives of any other Indian tribe or Nation that believes itself to be culturally affiliated with the sacred objects/objects of cultural patrimony should contact Dr. Thomas W. Kavanagh, Seton Hall University Museum, Seton Hall University, 400 South Orange Ave., South Orange, NJ 07079, telephone (973) 275–5873 or e-mail kavanath@shu.edu, before August 13, 2008. Repatriation of the sacred objects/objects of cultural patrimony to the Onondaga Nation of New York may proceed after that date if no additional claimants come forward.

The Seton Hall University Museum is responsible for notifying the Cayuga Nation of New York; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation of New York; Seneca Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Saint Regis Mohawk Tribe, New York; Tonawanda Band of Seneca Indians of New York; Tuscarora Nation of New York; and Haudenosaunee Standing Committee on Burial Rules and Regulations, a non-federally recognized Indian organization, that this notice has been published.

Dated: June 16, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–15910 Filed 7–11–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: University of Alaska Museum, Fairbanks, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the University of Alaska Museum, Fairbanks, AK, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1942, cultural items were donated to the University of Alaska Museum by Art Glover and accessioned (Accession number 217). According to accession ledger records, the cultural items had been removed from a burial on the Snake River, Walla Walla, WA. The 85 unassociated funerary objects are 74 stone arrowheads, 1 stone mortar, 1 leather pad, 1 iron axe head, 1 metal rifle butt, 1 iron knife blade, 1 antler digging stick handle, 1 stone club with wood handle, 1 hammerstone, 1 wood and iron fishhook, 1 carved wood seal figure, and 1 necklace with three boxes of beads.

These items are typical of funerary objects found in other burials excavated in the same geographic region. Funerary objects, including the iron axe head and metal rifle butt, place the funerary objects within the historic period. The Snake River borders Walla Walla County, WA, along the north. The Snake River and the surrounding land in this region are within the ceded lands and traditional use territory of the Weyiiletpuu (Cayuse), Imatalamama (Umatilla), and Waluulapam (Walla Walla) tribes. These three tribes are members of the Confederated Tribes of the Umatilla Indian Reservation, Oregon.

Officials of the University of Alaska Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 85 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the University of Alaska Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Umatilla Indian Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Mr. James Whitney, Archaeology Collections Manager, University of Alaska Museum, 907 Yukon Dr., Fairbanks, AK 99775–6960, telephone (907) 474–6943, before August 13, 2008. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Umatilla Indian Reservation, Oregon may proceed after that date if no additional claimants come forward.

The University of Alaska Museum is responsible for notifying the Confederated Tribes of the Umatilla Indian Reservation, Oregon that this notice has been published.

Dated: June 16, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–15911 Filed 7–11–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Homeland Security, U.S. Coast Guard Headquarters, Washington, DC, and University of Hawai'i at Hilo, Hilo, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the U.S. Department of Homeland Security, U.S. Coast Guard Headquarters, Washington, DC, and in the possession of the University of Hawai'i at Hilo, Hilo, HI. The human remains were removed from the South Point Gas House Site (Site H6), Ka'u district, Hawai'i Island, Hawai'i County, HI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native Hawaiian human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the U.S. Coast Guard and professional staff from the University of Hawai'i at Hilo in consultation with representatives of Hui Malama I Na Kupuna O Hawai'i Nei, Ka'u Preservation, and Office of Hawaiian Affairs.

At an unknown time between 1954 and 1959, human remains representing a minimum of one individual was removed from the South Point Gas House Site, Kama'oa Pu'u'eo ahupua'a, Ka'u District, Hawai'i Island, in Hawai'i County, HI. The site was encountered while the U.S. Coast Guard was constructing a fuel drum storage shed and the human remains were delivered to the University of Hawai'i at Hilo. No known individual was identified. No associated funerary objects are present.

The site was listed in Bishop Museum files as ''H6'' or ''11–Ha–B20–9,'' as part of their general site information, and was described by Bishop Museum archeologists as a buried midden site, but the individual is not listed in any report from the area. The midden deposits in the South Point region were intensively studied by several archeologists in the 1950s, including Dr. William Bonk at the University of Hawai'i at Hilo, and were largely determined to represent pre–contact Native Hawaiian occupations and burials. The South Point Gas House Site is a specific portion of the larger site complex that includes the Pu'u Ali'i Sand Dune site (H1), which is an early Native Hawaiian fishing village and burial area dating to pre–European contact.

Officials of the Department of Homeland Security, United States Coast Guard have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native Hawaiian ancestry. Officials of the Department of Homeland Security, United States Coast Guard also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native Hawaiian human remains and Hui Malama I Na Kupuna O Hawai'i Nei, Ka'u Preservation, and Office of Hawaiian Affairs.

Representatives of any other Native Hawaiian Organization or Indian tribe that believes itself to be culturally affiliated with the human remain should contact Dr. Daniel Koski-Karell, Environmental Management Office, U.S. Coast Guard Headquarters (COMDT CG–443), Room 09–1007, 1900 Half St. NW, Washington, DC 20593–0004, telephone (202) 475–5683, before August 13, 2008.

Repatriation of the human remains to Hui Malama I Na Kupuna O Hawai'i Nei, Ka'u Preservation, and Office of Hawaiian Affairs may proceed after that date if no additional claimants come forward.

Department of Homeland Security, United States Coast Guard is responsible for notifying Hui Malama I Na Kupuna O Hawai'i Nei, Ka'u Preservation, and Office of Hawaiian Affairs that this notice has been published.

Dated: June 19, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–15899 Filed 7–11–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument, Harpers Ferry, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary object in the possession of the U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument, Harpers Ferry, IA. The human remains and associated funerary objects were removed from Allamakee and Clayton Counties, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the superintendent, Effigy Mounds National Monument.

A detailed assessment of the human remains and associated funerary object was made by Effigy Mounds National Monument professional staff and Iowa Office of the State Archeologist professional staff in consultation with representatives of the Ho–Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Otoe–Missouria Tribe of Indians, Oklahoma; Prairie Island Indian Community in the State of Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Shakopee Mdewakanton Sioux Community of Minnesota; Upper Sioux Community, Minnesota; and Winnebago Tribe of Nebraska.

In the early 1970s, human remains representing a minimum of six individuals were removed from HWY 76 Rockshelter in Clayton County, IA, by National Park Service archeologist Wilfred Logan. No known individuals were identified. No associated funerary objects are present.

The HWY 76 Rockshelter site was described by Logan as a Late Woodland Period site representing a partial village complex of people who used effigy mounds for burial purposes.

In 1951 and 1952, human remains representing a minimum of one individual were removed from Spike Hollow Rockshelter in Allamakee County, IA, by National Park Service archeologist Wilfred Logan. No known individual was identified. No associated funerary objects are present.

Spike Hollow Rockshelter is a multicomponent site that contained both Oneota and Woodland artifacts.

In 1960, human remains representing a minimum of one individual were removed from Marquette–Yellow River Mound Group No. 9 in Clayton County, IA, during restoration work on Mound 66 by monument personnel. No known individual was identified. The one associated funerary object is a finely worked biface with one notch.

The site consists of a bear effigy mound, a bird effigy mound, and a compound mound of seven conjoined conicals and is presumed to be of the Woodland Period based on other cultural material from the site.

On the basis of archeological context, material culture, and geographic location, the mounds at Effigy Mounds National Monument have been identified as belonging to the Late Woodland Period culture (1700–750 B.P.). The Oneota culture (800–300 B.P.), which replaced the Effigy Mounds culture, occupied the area surrounding Effigy Mounds National Monument and is identified as being clearly ancestral to the Ho–Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Otoe–Missouria Tribe of Indians, Oklahoma; and Winnebago Tribe of Nebraska. Linguistic, oral tradition, temporal and geographic evidence reasonably indicates that the following Sioux Indian tribes possess ancestral ties to the Effigy Mounds National Monument region and the human remains and associated funerary object described above: Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Shakopee Mdewakanton Sioux Community of Minnesota; and Upper Sioux Community, Minnesota.

The Treaty of September 21, 1832 (Stat. L. VII, 374) between the Sauk and Fox and the United States, a cession required of the Sauk and Fox as indemnity for the expenses of the Black Hawk War, demonstrates that the Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation of Oklahoma; and Sac & Fox Tribe of the Mississippi in Iowa are the aboriginal occupants of the lands encompassing the present–day Effigy Mounds National Monument. Based upon an examination of the historical and geographical information, officials of Effigy Mounds National Monument determined that the Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation of Oklahoma; and Sac & Fox Tribe of the Mississippi in Iowa share a historic and continuing affiliation with Effigy Mounds National Monument lands, but do not possess a cultural affiliation with the human remains and associated funerary object described above.

Officials of Effigy Mounds National Monument have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of eight individuals of Native American ancestry. Officials of Effigy Mounds National Monument also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of Effigy Mounds National Monument have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Ho–Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Otoe–Missouria Tribe of Oklahoma; Prairie Island Indian Community in the State of Minnesota; Shakopee Mdewakanton Sioux Community of Minnesota; Upper Sioux Community, Minnesota; and Winnebago Tribe of Nebraska.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object should contact Phyllis Ewing, superintendent, Effigy Mounds National Monument, 151 HWY 76, Harpers Ferry, IA 52146, telephone (563) 873–3491, before August 13, 2008. Repatriation of the

human remains and associated funerary object to the Ho–Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Otoe–Missouria Tribe of Oklahoma; Prairie Island Indian Community in the State of Minnesota; Shakopee Mdewakanton Sioux Community of Minnesota; Upper Sioux Community, Minnesota; and Winnebago Tribe of Nebraska may proceed after that date if no additional claimants come forward.

Effigy Mounds National Monument is responsible for notifying the Ho–Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Otoe–Missouria Tribe of Indians, Oklahoma; Prairie Island Indian Community in the State of Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Shakopee Mdewakanton Sioux Community of Minnesota; Upper Sioux Community, Minnesota; and Winnebago Tribe of Nebraska that this notice has been published.

Dated: May 30, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–15906 Filed 7–11–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Rochester Museum & Science Center, Rochester, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Rochester Museum & Science Center, Rochester, NY. The human remains and associated funerary objects were removed from Genesee, Livingston, Monroe, and Ontario Counties, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Rochester Museum & Science Center professional staff in consultation with representatives of the Cayuga Nation of New York; Oneida Nation of New York; Oneida Tribe of Wisconsin; Onondaga Nation of New York; Seneca Nation of New York; Seneca–Cayuga Tribe of Oklahoma; Saint Regis Mohawk Tribe, New York (formerly the St. Regis Band of Mohawk Indians of New York); Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca Indians of New York; and Tuscarora Nation of New York.

In 1930, human remains representing a minimum of four individuals were removed from the Alhart Site (Bgn 015), Town of Sweden, Monroe County, NY, during a Rochester Museum & Science Center field expedition. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of 10 individuals were removed from the Alhart Site (Bgn 015), Town of Sweden, Monroe County, NY, and donated by Charles Alhart to the museum in 1933. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of two individuals were removed from the Alhart Site (Bgn 015), Town of Sweden, Monroe County, NY, and probably donated by Charles Alhart to the museum in 1933. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture as represented in other collections from the site, the Alhart Site has been identified as Iroquois (Seneca). Based on material culture and C14 dates, the site is dated to A.D. 1450–1560.

At an unknown date, human remains representing a minimum of two individuals were removed from the Belcher Site (Hne 008), Town of Richmond, Ontario County, NY. No known individuals were identified. No associated funerary objects are present.

In 1912, human remains representing a minimum of one individual were removed from the Belcher Site (Hne 008), Town of Richmond, Ontario County, NY, by Frederick Houghton. In 1942, the human remains were donated to the Rochester Museum & Science Center by the Buffalo Museum of Science. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture as represented in other collections from the site, the Belcher Site has been identified as Iroquois (Seneca), dating to A.D. 1540–1560.

In 1973, human remains representing a minimum of nine individuals were removed from the surface of the Brongo Site (Bgn 032), Town of Ogden, Monroe County, NY, by the Rochester Museum & Science Center at the request of the Monroe County Medical Examiner's Office. No known individuals were identified. No associated funerary objects are present.

In 1974, human remains representing a minimum of two individuals were removed from the surface of the Brongo Site (Bgn 032), Town of Ogden, Monroe County, NY, by Mr. Springer and Mr. McCabe and placed in the collection of the Rochester Museum & Science Center. No known individuals were identified. No associated funerary objects are present.

In 1974, human remains representing a minimum of two individuals were removed from the surface of the Brongo Site (Bgn 032), Town of Ogden, Monroe County, NY, by the Monroe County medical examiner and given to the Rochester Museum & Science Center. No known individuals were identified. No associated funerary objects are present.

In 1974, human remains representing a minimum of 10 individuals were removed from the Brongo Site (Bgn 032), Town of Ogden, Monroe County, NY, by the Rochester Museum & Science Center. No known individuals were identified. The nine associated funerary objects are four shell beads, three chert flakes, one possible hammerstone, and one lot of charcoal.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture as represented in other collections, the Brongo Site has been identified as Iroquois (Seneca), dated to A.D. 1450–1550.

At an unknown date, human remains representing a minimum of one individual were removed from the Caledonia Gravel Pit Site (no number), Town of Caledonia, Livingston County, NY, by person(s) unknown. In 1932, the human remains were donated to the Rochester Museum & Science Center by Tim McKay. No known individual was

identified. No associated funerary objects are present.

In 1932, human remains representing a minimum of four individuals were removed from the Caledonia Gravel Pit Site (no number), Town of Caledonia, Livingston County, NY, by the Rochester Museum & Science Center. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture as represented in other collections from the site, the Caledonia Gravel Pit Site has been identified as Iroquois (Seneca), dated to A.D. 1540–1560.

In 1952, human remains representing a minimum of three individuals were removed from the Davis Site (Bgn 017), Town of Chili, Monroe County, NY, during a Rochester Museum & Science Center field expedition. No known individuals were identified. No associated funerary objects are present.

In 1963, human remains representing a minimum of one individual were removed from the Davis Site (Bgn 017), Town of Chili, Monroe County, NY, by the Rochester Museum & Science Center. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture, the Davis site has been identified as Iroquois (Seneca), dated to A.D. 1400–1600.

In 1933, human remains representing a minimum of two individuals were removed from the Durkee Site (Hne 012), Town of Avon, Livingston County, NY, during a Rochester Museum & Science Center field expedition. No known individuals were identified. The one associated funerary object is a possible stone pestle.

At an unknown date, human remains representing a minimum of one individual were removed from the Durkee Site (Hne 012), Town of Avon, Livingston County, NY, by Charles F. Wray, and donated to the Rochester Museum & Science Center in 1936. No known individual was identified. No associated funerary objects are present.

In 1936, human remains representing a minimum of two individuals were removed from the Durkee Site (Hne 012), Town of Avon, Livingston County, NY, during a Rochester Museum & Science Center excavation. No known individuals were identified. No associated funerary objects are present.

In 1938, human remains representing a minimum of four individuals were removed from the Durkee Site (Hne 012), Town of Avon, Livingston County, NY, during a Rochester Museum & Science Center excavation. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of five individuals were removed from the Durkee Site (Hne 012), Town of Avon, Livingston County, NY. In 1963, the human remains were given to the Rochester Museum & Science Center by Charles Wray. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Archeological investigations at the Durkee Site have identified occupations during the Middle and Late Woodland periods, as well as the post–European contact period. Based on site location and continuities of material culture, the human remains from the Durkee Site have been identified as Iroquois (Seneca), dated to A.D. 1450–1550.

In 1926, human remains representing a minimum of one individual were removed from the Fall Brook Ossuary Site (Cda 018), Town of Geneseo, Livingston County, NY, by the Rochester Museum & Science Center. No known individual was identified. The three associated funerary objects are one pottery fragment, one stone fragment, and one skull of a small animal.

In 1937, human remains representing a minimum of 27 individuals were removed from the Fall Brook Ossuary Site (Cda 018), Town of Geneseo, Livingston County, NY, during a Rochester Museum & Science Center excavation. No known individuals were identified. The 44 associated funerary objects are 1 trumpet style pottery pipe, 1 elbow style pottery pipe, 1 pottery rimsherd, 2 potsherds, 1 woodchuck or muskrat mandible, 3 bone fishhooks, 2 bone awls, 1 bone splinter, 2 wild turkey wing bones, 2 turtle femurs, 2 deer phalangeal cones, 1 bone pendant, 5 tubular bone beads, 1 cylindrical bone bead, 1 perforated elk canine, 1 perforated bear canine, 1 slate pendant, 1 plano convex adze, 1 celt or adze in process, 2 triangular chert projectile points, 1 T-base chert drill, 1 chert knife or cache blade base, 1 chert flake, 1 cylindrical shell bead, 2 tubular shell beads, 1 discoidal shell bead, 3 shell pendants, and 2 snail shells.

At an unknown date, human remains representing a minimum of two individuals were removed from the Fall Brook Ossuary Site (Cda 018), Town of Geneseo, Livingston County, NY, by Albert Hoffman and donated to the Rochester Museum & Science Center in 1963. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of five individuals were removed from the Fall Brook Ossuary Site (Cda 018), Town of Geneseo, Livingston County, NY, by Albert Hoffman and Charles Barton. The human remains were salvaged from a plowed field. In 1961, the human remains were donated to the Rochester Museum & Science Center. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Archeological investigations at the Fall Brook Ossuary Site have identified occupations during the Middle and Late Woodland periods, as well as the post–European contact period. Based on site location and continuities of material culture, the Fall Brook Ossuary Site has been identified as Iroquois (Seneca), dated to A.D. 1450–1550.

At an unknown date, human remains representing a minimum of one individual were removed from the Farrell Site (Hne 016), Town of Caledonia, Livingston County, NY, during a Rochester Museum & Science Center expedition. No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of one individual were removed from the Farrell Site (Hne 016), Livingston County, NY. No additional details are available. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Archeological investigations at the Farrell Site have identified Archaic and Late Woodland occupations. Based on site location and continuities of material culture, the human remains from the Farrell Site have been identified as Iroquois (Seneca), dated to A.D. 1300–1350.

In 1959, human remains representing a minimum of one individual were removed from the Fletcher Site (Can 028), Town of Bristol, Ontario County, NY, during a Rochester Museum & Science Center expedition. No known individual was identified. No associated funerary objects are present.

Based on archeological context, this individual has been identified as Native American. Based on site location and

continuities of material culture as represented in other collections from the site, the Fletcher Site has been identified as Iroquois (Seneca), dated to A.D. 1350–1450.

At an unknown date, human remains representing a minimum of one individual were removed from the Footer Site (Can 029), Town of Bristol, Ontario County, NY, and donated to the Rochester Museum & Science Center by the Morgan Chapter of the New York State Archaeological Association in 1962. No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of one individual were removed from the Footer Site (Can 029), Town of Bristol, Ontario County, NY, by Alton Parker and donated to the Rochester Museum & Science Center in 1968. No known individual was identified. No associated funerary objects are present.

In 1985, human remains representing a minimum of two individuals were removed from the Footer Site (Can 029), Town of Bristol, Ontario County, NY, during a Rochester Museum & Science Center excavation. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture as represented in other collections from the site, the Footer Site has been identified as Iroquois (Seneca), dated to A.D. 1300–1400.

At an unknown date, human remains representing a minimum of one individual were removed from the Fort Hill Site (Bgn 001), Town of LeRoy, Genesee County, NY, during excavations by Albert Hoffman and Charles Barton and donated to the Rochester Museum & Science Center in 1955. No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of one individual were removed from the Fort Hill Site (Bgn 001), Town of LeRoy, Genesee County, NY. No additional data is available. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology and archeological context, these individuals have been identified as Native American. Based on site location and continuities of material culture, the Fort Hill Site has been identified as Iroquois (Seneca), dated to A.D. 1450–1550.

In 1949, human remains representing a minimum of one individual were removed from the Hammond Gravel Pit Site (Bgn 003), Town of Wheatland, Monroe County, NY, by John Bailey and donated to the Rochester Museum & Science Center. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, this individual has been identified as Native American. Based on site location and continuities of material culture as represented in other collections from the site, the Hammond Gravel Pit Site has been identified as Iroquois (Seneca), dated to A.D. 1450–1550.

In 1934, human remains representing a minimum of 13 individuals were removed from the Hilliard Site (Can 003), Town of East Bloomfield, Ontario County, NY, during an expedition by the Rochester Museum & Science Center. No known individuals were identified. The one associated funerary object is a burnt fragment of wood.

At an unknown date, but probably in 1934, human remains representing a minimum of three individuals were removed from the Hilliard Site (Can 003), Town of East Bloomfield, Ontario County, NY, by the Rochester Museum & Science Center. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture, the Hilliard Site has been identified as Iroquois (Seneca), dated to A.D. 1450–1550.

In 1935, human remains representing a minimum of two individuals were removed from the Klink Site (Hne 025), Town of Rush, Monroe County, NY, during an excavation by the Rochester Museum & Science Center. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Archeological investigations from the Klink Site have identified several occupation periods. Based on site location and continuities of material culture as represented in other collections from the site, the human remains from the Klink Site have been identified as Iroquois (Seneca), dated to A.D. 1100–1250.

At an unknown date, human remains representing a minimum of two individuals were removed from the Maplewood Station Site (Roc 006), Town of Chili, Monroe County, NY. No additional information is available. No known individuals were identified. No associated funerary objects are present.

At an unknown date, but probably in 1929, human remains representing a minimum of one individual were removed from the Maplewood Station Site (Roc 006), Town of Chili, Monroe County, NY, possibly excavated by the Rochester Museum & Science Center. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture as represented in other collections from the site, the Maplewood Station Site has been identified as Iroquois (Seneca), dated to A.D. 1450–1550.

In 1914, human remains representing a minimum of two individuals were removed from the Markham Site (Hne 013) near Avon, Town of Rush, Monroe County, NY, by Harrison C. Follette. No known individuals were identified. No associated funerary objects are present.

In 1926, human remains representing a minimum of two individuals were removed from the Markham Site (Hne 013) near Avon, Town of Rush, Monroe County, NY, by William A. Ritchie during an excavation by the Rochester Museum & Science Center. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of 12 individuals were removed from the Markham Site (Hne 013) near Avon, Town of Rush, Monroe County, NY, by Charles F. Wray and donated to the Rochester Museum & Science Center in 1963. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Archeological investigations at the Markham Site have identified occupations during the Middle and Late Woodland periods, as well as the post–European contact period. Based on site location and continuities of material culture as represented in other collections from the site, the materials from the Markham Site have been identified as Iroquois (Seneca), dated to A.D. 1450–1550.

In 1982, human remains representing a minimum of one individual were removed from the Markham Pond Site (Hne 103), Town of Rush, Monroe County, NY, during an excavation by the Rochester Museum & Science Center. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, this individual has been identified as Native American. Based on site location and continuities of material culture as represented in other collections from the site, the Markham Pond Site has

been identified as Iroquois (Seneca), dated to A.D. 1100–1250.

In 1934, human remains representing a minimum of eight individuals were removed from the Martin Road Gravel Pit Site (Roc 004), Town of Henrietta, Monroe County, NY, during an expedition by the Rochester Museum & Science Center. No known individuals were identified. The nine associated funerary objects are five bone awls and four bone fragments (non–human).

In 1934, human remains representing a minimum of nine individuals were uncovered by workmen at the Martin Road Gravel Pit Site (Roc 004), Town of Henrietta, Monroe County, NY, and collected by Arthur C. Parker and William A. Ritchie for the Rochester Museum & Science Center. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of two individuals were removed from the Martin Road Gravel Pit Site (Roc 004), Monroe County, NY, by the Monroe County Coroner's office and donated to the Rochester Museum & Science Center in 1950. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture as represented in other collections from the site, the Martin Road Gravel Pit Site has been identified as Iroquois (Seneca), dated to A.D. 1450–1550.

In 1969, human remains representing a minimum of one individual were removed from the Murawski Site (Roc 039), Town of Webster, Monroe County, NY, during a salvage expedition by the Rochester Museum & Science Center. No known individual was identified. The one associated funerary object is a projectile point.

Based on skeletal morphology, this individual has been identified as Native American. Based on site location and continuities of material culture, the Murawski Site has been identified as Iroquois (Seneca), dated to A.D. 1100–1300.

At an unknown date, human remains representing a minimum of one individual were removed from the Palmer A Site (Bgn 021), Town of Wheatland, Monroe County, NY, by Donald Mitchell, Monroe County Sheriff's Office, and donated to the Rochester Museum & Science Center in 1948. No known individual was identified. No associated funerary objects are present.

In 1949, human remains representing a minimum of one individual were removed from the Palmer A Site (Bgn 021), Town of Wheatland, Monroe County, NY, by William A. Ritchie during an excavation by the Rochester Museum & Science Center. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture, the Palmer A Site has been identified as Iroquois (Seneca), dated to A.D. 1450–1550.

At an unknown date, human remains representing a minimum of two individuals were removed from the Rapp Farm Site (Hne 038), Town of Rush, Monroe County, NY, by Albert Hoffman and donated to the Rochester Museum & Science Center in 1936. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of four individuals were removed from the Rapp Farm Site (Hne 038), Town of Rush, Monroe County, NY, and donated by Charles F. Wray to the Rochester Museum & Science Center in 1963. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture, the Rapp Farm Site has been identified as Iroquois (Seneca), dated to A.D. 1100–1250.

At an unknown date, human remains representing a minimum of two individuals were removed from the Richmond Mills Site, Town of Richmond, Ontario County, NY, by Frederick Houghton and donated by the Buffalo Museum of Science to the Rochester Museum & Science Center in 1942. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture as represented in other collections from the site, the Richmond Mills Site has been identified as Iroquois (Seneca), dated to A.D. 1540–1560.

In 1934, human remains representing a minimum of 23 individuals were removed from the Sackett Site (Can 001), Town of Canandaigua, Ontario County, NY, during an expedition by the Rochester Museum & Science Center. No known individuals were identified. The 15 associated funerary objects are 9 projectile points, 1 antler projectile point, 2 bone fragments (non–human), 2 cylindrical bone beads, and 1 bone bead made from a human femur.

At an unknown date, but probably in 1934, human remains representing a minimum of five individuals were removed from the Sackett Site (Can 001), Town of Canandaigua, Ontario County, NY, probably during an expedition by the Rochester Museum & Science Center. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Archeological investigations at the Sackett Site have identified Late Woodland, as well as post–European contact components. Based on site location, continuities of material culture as represented in other collections from the site, and C14 dates, these cultural items from the Sackett Site have been identified as Iroquois (Seneca), dated to A.D. 1100–1250.

In 1934, human remains representing a minimum of four individuals were removed from the Schantz Site (Bgn 016), Town of Ogden, Monroe County, NY, and collected by the Monroe County Coroner's office. The human remains were donated by the Coroner to the Rochester Museum & Science Center in 1949. No known individuals were identified. The one associated funerary object is a pottery pipe.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture, the Schantz Site has been identified as Iroquois (Seneca), dated to A.D. 1450–1550.

In 1938, human remains representing a minimum of eight individuals were removed from the Shakeshaft Gravel Pit Site (Bgn 019), Town of Riga, Monroe County, NY, during an expedition of the Rochester Museum & Science Center. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of three individuals were removed from the Shakeshaft Gravel Pit Site (Bgn 019), Town of Riga, Monroe County, NY, during excavations by Albert J. Hoffman and donated to the Rochester Museum & Science Center in 1961. No known individuals were identified. The seven associated funerary objects are one pottery pipe, three fresh-water clam shells, two bird bone fragments, and one turtle shell fragment.

In 1961, human remains representing a minimum of 19 individuals were removed from the Shakeshaft Gravel Pit Site (Bgn 019), Town of Riga, Monroe County, NY, during a salvage expedition

by the Rochester Museum & Science Center. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture, the Shakeshaft Gravel Pit Site has been identified as Iroquois (Seneca), dated to A.D. 1400–1500.

In 1928, human remains representing a minimum of nine individuals were removed from the Volmer Farm Site (Roc 005), Town of Henrietta, Monroe County, NY, during an excavation by the Rochester Museum & Science Center. No known individuals were identified. The two associated funerary objects are one pottery pipe and one bone awl.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture, the Volmer Farm Site has been identified as Iroquois (Seneca), dated to A.D. 1450–1550.

In 1956, human remains representing a minimum of one individual were removed from the surface of the Wadsworth Fort Site (Cda 011), Town of Geneseo, Livingston County, NY, by the Rochester Museum & Science Center. No known individual was identified. No associated funerary objects are present.

Based on archeological context, this individual has been identified as Native American. Based on site location and continuities of material culture as represented in other collections from the site, the Wadsworth Fort Site has been identified as Iroquois (Seneca), dated to A.D. 1540–1560.

In 1924, human remains representing a minimum of one individual were removed from the Warbois Site (Bgn 014), Town of Chili, Monroe County, NY, during an excavation by the Rochester Museum & Science Center. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, this individual has been identified as Native American. Based on site location and continuities of material culture as represented in other collections from the site, the Warbois Site has been identified as Iroquois (Seneca), dated to A.D. 1350–1450.

Officials of the Rochester Museum & Science Center have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 251 individuals of Native American ancestry. Officials of the Rochester Museum & Science Center also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 93 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Rochester Museum & Science Center have determined that pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Seneca Nation of New York, Seneca–Cayuga Tribe of Oklahoma, and Tonawanda Band of Seneca Indians of New York.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Gian Carlo Cervone, Senior Registrar, Rochester Museum & Science Center, 657 East Avenue, Rochester, NY 14607–2177, telephone (585) 271–4552 x310, before August 13, 2008. Repatriation of the human remains and associated funerary objects to the Seneca Nation of New York, Seneca–Cayuga Tribe of Oklahoma, and Tonawanda Band of Seneca Indians of New York may proceed after that date if no additional claimants come forward.

The Rochester Museum & Science Center is responsible for notifying the Cayuga Nation of New York; Oneida Nation of New York; Oneida Tribe of Wisconsin; Onondaga Nation of New York; Seneca Nation of New York; Seneca–Cayuga Tribe of Oklahoma; Saint Regis Mohawk Tribe, New York; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca Indians of New York; and Tuscarora Nation of New York that this notice has been published.

Dated: June 5, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–15908 Filed 7–11–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, U.S. Fish and Wildlife Service, Region 7, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Region 7, Anchorage, AK. The human remains and associated funerary objects were removed from Michigan Rock Cave, near Tanaga Island, Alaska Maritime National Wildlife Refuge, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by U.S. Fish and Wildlife Service, Region 7 professional staff with assistance from the Alaska State Office of History and Archaeology, in consultation with representatives of the Aleut Corporation; Native Village of Atka, represented by the Atka IRA Council and Atxam Corporation; and Unangan Repatriation Commission, a non–federally recognized Native Alaskan group.

In 1950, human remains representing a minimum of three individuals were removed from the Michigan Rock Cave on a small islet off of Tanaga Island in the Aleutian Islands, Unit of the Alaska Maritime National Wildlife Refuge, AK, by Dr. Theodore P. Bank II, during permitted archeological excavations. The human remains were taken by Dr. Bank to the University of Michigan where they were curated until his death, at which time they were sent to the University of Alaska Fairbanks. U.S. Fish and Wildlife Service was later notified of the existence of the human remains and after consultation with the Aleut Corporation, the human remains were sent to The Museum of the Aleutians in Unalaska, AK. No known individuals were identified. The 21 associated funerary objects are 14 wooden bidarka pieces, 2 pieces of matting, 1 piece of birch bark, 1 bone implement, 1 foreshaft with remnant of iron point, 1 large mammal bulla, and 1 basalt blade.

There are no radiocarbon dates available for the human remains. All known dated cave burials from the Aleutians are younger than 2,000 years old (Black 1982, pg 24; Black 2003, pg 36; Hayes 2002). The burial context and physical traits of the human remains are consistent with those observed for pre–contact Aleut populations.

The Unangan Repatriation Commission, a non–federally recognized Native Alaskan group, provided the U.S. Fish and Wildlife Service with a list of cultural affiliation for islands and corresponding village corporations and tribal entities. No corporation or tribe specifically claims Tanaga Island. Cultural affiliation of Aleut ancestors from unclaimed islands lies with the Aleut Corporation, the regional corporation representing all Aleut people. After Russian contact with the Aleutians began in A.D. 1751, the population declined precipitously. By the 1790s, many of the Aleuts were concentrated in a small number of regional centers. For the western Aleutians, most were removed to the Native Village of Atka. Therefore, based on historical records, geographic location, and information presented during consultation, it is reasonably determined that the descendants of Tanaga Island are members of the present–day Aleut Corporation and Native Village of Atka.

Officials of the U.S. Fish and Wildlife Service, Region 7 have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of three individuals of Native American ancestry. Officials of the U.S. Fish and Wildlife Service, Region 7 also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 21 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Fish and Wildlife Service, Region 7 have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Aleut Corporation and Native Village of Atka.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Debra Corbett, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, telephone (907) 786–3399, before August 13, 2008. Repatriation of the human remains and associated funerary objects to the Aleut Corporation and Native Village of Atka may proceed after that date if no additional claimants come forward.

U.S. Fish and Wildlife Service, Region 7 is responsible for notifying the Aleut Corporation; Aleutian/Pribilof Islands Association, Inc.; Atxam Corporation; and Native Village of Atka that this notice has been published.

Dated: June 5, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–15901 Filed 7–11–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, U.S. Fish and Wildlife Service, Region 7, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Region 7, Anchorage, AK. The human remains and associated funerary objects were removed from Kagamil Island, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by U.S. Fish and Wildlife Service, Region 7 professional staff and forensic anthropologists from the University of Alaska, Anchorage, and with assistance from the Alaska State Office of History and Archaeology, in consultation with representatives of the Chaluka Corporation.

Between 1947 and 1950, human remains representing a minimum of 30 individuals were removed from Cold Cave on Kagamil Island, AK, by Theodore P. Bank II, an ethno–botanist, and William S. Laughlin, a physical anthropologist. The human remains were sent to the University of Michigan. In 1982, at the request of the Ounalashka Corporation and the National Park Service, the collection was moved to the University of Alaska Museum in Fairbanks. In 2002, the human remains and associated funerary artifacts were sent to The Museum of the Aleutians in Unalaska, AK, at the request of the Ounalashka Corporation and the museum. No known individuals were identified. The 127 associated funerary objects are 42 assorted bidarka pieces; 1 lot of wood fragments and other wooden objects; 1 wood bidarka paddle; 1 wooden spear shaft; 4 skin fragments from bidarka; 3 bone wedges; 1 bone bladder plug; 1 bone rack peg; 2 toggles; 3 bone points; 1 bone harpoon point; 1 bird bone awl; 2 bone awls; 1 digging tool; 1 bone fore–shaft; 1 bone hook; 1 bone fishhook shank; 1 bone artifact; 6 bird bones; 1 ivory labret; 1 walrus tusk; 1 curved antler fragment; 7 pieces of cordage; 1 cord wrapped with skin; 1 piece of matting with black decoration; 23 matting fragments; 1 piece of matting containing duff, wood and bones; 1 piece of matting with grass and hair; 2 loose human hairs; 1 lot of stuffing moss in unknown quantities; 1 grass bundle; 1 lot of grass padding; 1 birch bark fragment; 1 stone chip; 1 obsidian point; 2 basalt points; 1 broken basalt blade; 1 worked pumice block; 2 pieces of bird feather coat remains; and 2 sea otter pelt remains.

Between 1947 and 1950, human remains representing a minimum of one individual were removed from Warm Cave on Kagamil Island, AK, by Theodore P. Bank II, an ethno–botanist, and William S. Laughlin, a physical anthropologist. The human remains were sent to the University of Michigan. In 1982, at the request of the Ounalashka Corporation and the National Park Service, the collection was moved to the University of Alaska Museum in Fairbanks. In 2002, the human remains and associated funerary artifacts were sent to The Museum of the Aleutians, at the request of the Ounalashka Corporation and the museum. No known individual was identified. The 23 associated funerary objects are 7 round wooden shafts; 5 wood pieces; 2 wood pieces with thong attached; 1 wooden piece bound with gut; 1 wood object with peg holes; 1 piece birch bark; 3 pieces of matting, hair and fiber; 1 piece of cordage; 1 obsidian flake; and 1 worked shale fragment.

Between 1947 and 1950, human remains representing a minimum of four individuals were removed from Mask Cave on Kagamil Island, AK, by Theodore P. Bank II, an ethno–botanist. The human remains were sent to the University of Michigan. In 1982, at the request of the Ounalashka Corporation and the National Park Service, the collection was moved to the University of Alaska Museum in Fairbanks. In 2002, the human remains and associated funerary artifacts were sent to The Museum of the Aleutians, at the request of the Ounalashka Corporation and the

museum. No known individuals were identified. The 60 funerary objects are 3 complete or nearly complete painted wood masks; approximately 29 mask fragments; 4 figurines and carved wooden objects; 17 bidarka pieces including a keel piece and a cross piece; 1 ivory labret; 1 ivory needle; 2 stone artifacts; 1 basalt flake; 1 shell object; and 1 lot of duff collected near a mask.

All individuals found within these caves are believed to be associated with the modern day populations of Umnak Island and Chaluka Corporation. There are no radiocarbon dates available for the human remains. All known dated cave burials from the Aleutians are younger than 2,000 years old (Black 1982, pg 24; Black 2003, pg 36; Hayes 2002). The human remains collected from burial caves on Kagamil Island were interred using traditional Aleut burial practices. The burial context and physical traits of the human remains are consistent with those observed for pre-contact Aleut populations. Skeletal morphology of present–day Aleut populations is similar to that of prehistoric Aleut populations and demonstrates biological affiliation between present–day Aleut groups and prehistoric populations in the Aleutian Islands.

Analysis by the University of Alaska, Anchorage, with the assistance of the Alaska State Office of History and Archaeology, included cranio–metric analysis and non–metric analysis of the post cranial skeletal human remains. The use of radiography was used to determine the contents of a small mummy bundle from Warm Cave. Analysis of the human remains concluded that these individuals are all of Aleut origin and are related culturally and geographically to each other and to the modern day inhabitants of Umnak Island, which are members of the Chaluka Corporation and Native Village of Nikolski. Cultural affiliation between the late prehistoric populations on Kagamil Island and the Chaluka Corporation is demonstrated by recent historical records. The Islands of the Four Mountains were occupied by a culturally distinct group of which little is known. Contact with Russian explorers was made in A.D. 1741. In the late 1700s, with assistance from Russian explorers, the Umnak Aleuts waged war on the people of the Islands of Four Mountains and around A.D. 1766 to 1772, that group had been substantially destroyed. Survivors of the conflict were incorporated into villages on Umnak.

Officials of the U.S. Fish and Wildlife Service, Region 7 have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 35 individuals of Native American ancestry. Officials of the U.S. Fish and Wildlife Service, Region 7 also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 210 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Fish and Wildlife Service, Region 7 have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Chaluka Corporation and Native Village of Nikolski.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Debra Corbett, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, telephone (907) 786–3399, before August 13, 2008. Repatriation of the human remains and associated funerary objects to the Chaluka Corporation and Native Village of Nikolski may proceed after that date if no additional claimants come forward.

U.S. Fish and Wildlife Service, Region 7 is responsible for notifying the Chaluka Corporation and Native Village of Nikolski that this notice has been published.

Dated: June 5, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–15902 Filed 7–11–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, U.S. Fish and Wildlife Service, Region 7, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Region 7, Anchorage, AK. The human remains and associated funerary objects were removed from Atka Island, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by U.S. Fish and Wildlife Service, Region 7 professional staff with assistance from the Alaska State Office of History and Archaeology and University of Alaska, Anchorage, in consultation with representatives of the Aleut Corporation; Atka IRA Council and Atxam Corporation, which represent the Native Village of Atka; and Unangan Repatriation Commission, a non–federally recognized Native Alaskan group.

In either 1948 or 1949, human remains representing a minimum of two individuals were removed from burial caves on Atka Island, AK, by Theodore P. Bank II, an ethnobotanist, during an expedition undertaken for the purpose of collecting botanical as well as archeological specimens, which included human remains. The human remains from Atka Island have been curated at several institutions before finally arriving at the Museum of the Aleutians, Dutch Harbor, AK, in 2002 after which the U.S. Fish and Wildlife Service was informed. No known individuals were identified. The 18 associated funerary objects are 1 stone lamp, 2 stone lamp fragments, 2 carved stone artifacts, 1 stone point, 1 ivory artifact, 9 bone tools, 1 sea otter skull, and 1 water worn bear mandible.

The cultural affiliation has been determined based on previous occupations of the island, as well as the physical traits exhibited by both past populations and those of the recovered human remains. Atka Island has been occupied for at least 2,000 years and probably close to 6,000 years by the Aleut people. All known dated cave burials from the Aleutians are younger than 2,000 years old (Black, 1982, pg 24; Black 2003, pg 36; Hayes 2002). The skeletal morphology, other scientific testing, and physical traits associated with prehistoric Aleut populations and modern day Aleuts are consistent with the human remains. The burial contexts of the human remains are consistent with those observed for pre–contact Aleut populations. Based on scientific studies, burial context, and aboriginal occupation, the descendants of the

Aleut from Atka Island are members of the Atxam Corporation and Native Village of Atka.

Officials of the U.S. Fish and Wildlife Service, Region 7 have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the U.S. Fish and Wildlife Service, Region 7 also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 18 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Fish and Wildlife Service, Region 7 have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Atxam Corporation and Native Village of Atka.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Debra Corbett, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, telephone (907) 786–3399, before August 13, 2008. Repatriation of the human remains and associated funerary objects to the Native Village of Atka, represented by the Atka IRA Council and Atxam Corporation, may proceed after that date if no additional claimants come forward.

The U.S. Fish and Wildlife Service, Region 7 is responsible for notifying the Aleut Corporation; Aleutian/Pribilof Islands Association, Inc.; and Native Village of Atka, represented by the Atka IRA Council and Atxam Corporation that this notice has been published.

Dated: June 5, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–15903 Filed 7–11–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of a meeting of the Native American Graves Protection and Repatriation Review Committee (Review Committee). The Review Committee will meet on October 11-12, 2008, at the Sheraton Suites San Diego at Symphony Hall, 701 A Street, San Diego, CA 92101. Meeting sessions will begin at 8:30 a.m. and end at 5:00 p.m. each day.

The agenda for the meeting includes an update on National NAGPRA Program activities during the second half of fiscal year 2008; activity reports from the National NAGPRA Program as requested by the Review Committee; an update and Review Committee recommendations on development of the draft proposed rule for disposition of unclaimed cultural items excavated or removed from Federal or tribal lands after November 16, 1990 (to be codified at 43 CFR 10.7); requests for recommendations regarding the disposition of culturally unidentifiable human remains; presentations and statements by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public; and the selection of dates and a site for the autumn 2009 meeting.

A detailed agenda for this meeting will be posted by September 11, 2008, at http://www.nps.gov/history/nagpra/.

A request to make a presentation before the Review Committee at the October meeting will be considered if it is received, in writing, by the close of business on September 1, 2008. The request must include an abstract of the presentation and contact information for the presenter(s). Likewise, a written statement will be accepted for consideration by the Review Committee at the October meeting if it is received by close of business on September 1, 2008. Send presentation requests and statements by U.S. Postal Service mail or commercial delivery to: Designated Federal Officer, NAGPRA Review Committee, National Park Service - National NAGPRA Program (2253), 1201 Eye Street, NW, 8th Floor, Washington, DC 20005. In order to insure that presentation requests and statements are received in a timely manner, it is recommended that these documents also be sent via fax, to (202) 371-5197.

The transcript of a Review Committee meeting is available for distribution approximately eight weeks from the date of the meeting. For a written transcript, contact the Designated Federal Officer at the above listed address. To request an electronic copy of a meeting transcript, contact David_Tarler@nps.gov. Information about NAGPRA, the Review Committee, and Review Committee meetings is available at the National NAGPRA website, http://www.nps.gov/history/nagpra/. For the Review Committee's meeting procedures, select ''Review Committee,'' then select ''Procedures.''\

The Review Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001-3013. Review Committee members are appointed by the Secretary of the Interior. The Review Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such human remains; consulting with Indian tribes and Native Hawaiian organizations and museums on matters affecting such tribes or organizations lying within the scope of work of the Committee; consulting with the Secretary of the Interior on the development of regulations to carry out NAGPRA; and makingrecommendations regarding future care of repatriated cultural items. The Review Committee's work is carried out during the course of meetings that are open to the public.

Dated: June 26, 2008

David Tarler

Designated Federal Officer,

Native American Graves Protection and Repatriation Review Committee.

[FR Doc. E8–15891 Filed 7–11–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before June 28, 2008. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye

St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 29, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/ National, Historic Landmarks Program.

ARIZONA

Pima County

Feldman's Historic District, Generally N. of E. Speedway Blvd.; W. of N. Park Ave.; S. of E. Lee St.; E. of N. 7th St., Tucson, 08000752.

LOUISIANA

Orleans Parish

Upper Central Business Distict (Boundary Increase), Roughly bounded by O'Keefe, Poydras, Convention Center Blvd., St. Rt. 90 and Howard Ave., New Orleans, 08000755.

MISSISSIPPI

Forrest County

Beverly Drive-In Theatre, 5320 U.S. Hwy 49 S., Hattiesburg, 08000761.

MISSOURI

Jackson County

Bon Air Apartments Building, (Working-Class and Middle-Income Apartment Buildings in Kansas City, Missouri MPS) 4127–4133 Locust St., Kansas City, 08000754.

MONTANA

Gallatin County

Stateler Memorial Methodist Church, (Willow Creek Area MPS) 303 Main St., Willow Creek, 08000757.

SOUTH CAROLINA

Horry County

Conway Post Office, (Conway MRA) 428 Main St., Conway, 08000758.

Kingston Presbyterian Church and Cemetery, (Conway MRA) 800 3rd Ave., Conway, 08000759.

Spartanburg County Montgomery Building, 187 N. Church St., Spartanburg, 08000760.

TEXAS

Jefferson County

Marconi Tower at Port Arthur College, 1500 Procter, Port Arthur, 08000756.

VERMONT

Chittenden County

LaFerriere House, (Burlington, Vermont MPS AD) 171–173 Intervale Ave., Burlington, 08000762.

WISCONSIN

Wood County

Upham House Historic District, Generally bounded by W. 3rd St., S. Walnut Ave., W. 4th St., and S. Chestnut Ave., Marshfield, 08000753.

[FR Doc. E8–15869 Filed 7–11–08; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office on Violence Against Women

[OMB Number 1122–NEW]

Agency Information Collection Activities: New Collection

ACTION: 60-Day Notice of Information Collection Under Review: Quarterly Conference Planning and Reporting Data Collection Form.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted for ''sixty days'' until September 12, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Quarterly Conference Planning and Reporting Data Collection Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None yet. U.S. Department of Justice, Office on Violence Against Women

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 100 entities providing technical assistance as recipients under the OVW Technical Assistance Program (TA Program). OVW's TA Program provides grantees from the different OVW grant programs with training, expertise, and problem-solving strategies to enhance their efforts to meet the challenges of addressing domestic violence, sexual assault, dating violence, and stalking. OVW's Technical Assistance providers offer educational opportunities, conferences, peer-to-peer consultations, site visits, and tailored assistance that allows OVW grantees and others to learn from experts and one another about how to effectively respond to crimes of violence against women. Technical Assistance providers routinely hold meetings, conferences and trainings for OVW grantees to enhance the success of local projects they are implementing with VAWA grant funds. Section 218 of the Department of Justice Appropriations Act, 2008 (Title II, Division B, Pub. L. 110–161) requires the Attorney General to submit quarterly reports to the Inspector General regarding the costs and contracting procedures for certain conferences. In addition, section 1173 of Public Law 109–162, the Violence Against Women and Department of Justice Reauthorization Act of 2005 requires the Attorney General to prepare an annual report to the Chairman and ranking minority members of the Committees on the Judiciary of the Senate and of the House of Representatives that provides specified details about trainings and conferences. This new data collection form will enable OVW to collect information in order to respond to these reporting requirements in a timely manner.

(5) *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond/reply: It is estimated that it will take the 100 respondents (Technical Assistance providers) approximately 15 minutes to complete the data collection form four times a year. The form collects basic information about conferences, meetings and trainings including location, purpose, costs, and number of attendees. This is information that is routinely collected by Technical Assistance providers in the ordinary course of business.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection form is 100 hours. It will take approximately 15 minutes for the Technical Assistance providers to complete the form four times a year.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: July 7, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–15894 Filed 7–11–08; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0008]

Office on Violence Against Women: Agency Information Collection Activities: Revision of a Currently Approved Collection

ACTION: 60-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for Enhanced Training and Services to End Violence Against and Abuse of Women Later in Life Program.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted for ''sixty days'' until September 12, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Enhanced Training and Services to End Violence Against and Abuse of Women Later in Life Program (Training Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* 1122–0008. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 18 grantees of the Training Program. Training Program grants may be used for training programs to assist law enforcement officers, prosecutors, and relevant officers of Federal, State, tribal, and local courts in recognizing, addressing, investigating, and prosecuting instances of elder abuse, neglect, and exploitation and violence against individuals with disabilities, including domestic violence and sexual assault, against older or disabled individuals. Grantees fund projects that focus on providing training for criminal justice professionals to enhance their ability to address elder abuse, neglect and exploitation in their communities and enhanced services to address these crimes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 18 respondents (Training Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Training Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 36 hours, that is 18 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: July 7, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–15895 Filed 7–11–08; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0012]

Office on Violence Against Women; Agency Information Collection Activities: Extension of a Currently Approved Collection

ACTION: 60-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for Education and Technical Assistance Grants to End Violence Against Women with Disabilities Program.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with

the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted for ''sixty days'' until September 12, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Education and Technical Assistance Grants to End Violence Against Women with Disabilities Program (Disability Grant Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* 1122–0012. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 18 grantees of the Disability Grant Program. Grantees include states, units of local government, Indian tribal governments and non-governmental private entities. These grants provide funds for education and technical assistance in the form of training, consultations, and information to organizations and programs that provide services to individuals with disabilities and to domestic violence programs providing shelter or related assistance.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 18 respondents (Disability Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Disability Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 36 hours, that is 18 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: July 7, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–15896 Filed 7–11–08; 8:45 am]

BILLING CODE 4410–FX–P

DEPARMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0003]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Report of Multiple Sale or Other Disposition of Pistols and Revolvers.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 12, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Brenda Bennett, Chief, Industry Records Branch, National Tracing Center, 244 Needy Road, Martinsburg, WV 25401.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision.

(2) *Title of the Form/Collection:* Report of Multiple Sale or Other Disposition of Pistols and Revolvers.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3310.4. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: Federal Government,

State, Local, or Tribal Government. The form has been changed to allow for multiple disposition dates. Also, input fields have changed to more accurately reflect the information that is required.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 61,000 respondents will complete a 15 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 61,000 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: July 7, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E8–15874 Filed 7–11–08; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0005]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Application and Permit for Importation of Firearms Ammunition and Implements of War.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 12, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kevin Boydston, Chief, Firearms and Explosives Imports Branch, 244 Needy Road, Martinsburg, West Virginia 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application and Permit for Importation of Firearms Ammunition and Implements of War.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 6, Part 1 (5330.3A) Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit, Federal Government, State, Local or Tribal Government. The form is used to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. It is also used to secure authorization to import such articles and serves as authorization to the U.S. Customs Service to allow these articles entry into the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 11,000 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 5,500 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: July 7, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E8–15875 Filed 7–11–08; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0046]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 12, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Barbara Terrell, Firearms Enforcement Branch, 99 New York Avenue, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

—Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government. *Other:* None. The letter is used by a law enforcement officer to purchase handguns to be used in his/her official duties from a licensed firearm dealer anywhere in the country. The letter shall state that the officer will use the firearm in official duties and that a records check reveals that the purchasing officer has no convictions for misdemeanor crimes or domestic violence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 50,000 respondents will take 5 seconds to file the letter.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 69 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: July 7, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E8–15876 Filed 7–11–08; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Randall Relyea, D.O.; Denial of Application

On July 25, 2007, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Randall Relyea, D.O. (Respondent), of Price, Utah. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BR8899809, as a practitioner, on the ground that Respondent's ''continued registration is inconsistent with the public interest.'' Show Cause Order at 1.

The Show Cause Order specifically alleged that in February 2007, Respondent had engaged in a scheme to have one of his patients obtain narcotic controlled substances for his personal use. Show Cause Order at 1. The Show Cause Order also alleged that during the previous year, Respondent had engaged in ''a similar scheme * * * to acquire narcotics,'' and that Respondent had been charged with multiple felony narcotics offenses under Utah law with respect to both schemes. *Id.*

The Show Cause Order further alleged that in 1999, Respondent had been ''charged with felonies [under Missouri law] involving [his] obtaining hydrocodone under a fictitious name.'' *Id.* The Show Cause Order alleged that while these charges were later reduced to misdemeanors and that Respondent had surrendered his DEA registration, he had ''continued to abuse narcotics at levels indicating recurrent or habitual use.'' *Id.*

The Show Cause Order, which notified Respondent of his right to a hearing or to submit a statement in lieu of a hearing, was served on him by certified mail to his registered location as evidenced by the signed return receipt card.[1] Since that time, neither Respondent nor his counsel has requested a hearing on the allegations of the Show Cause Order. Because more than thirty days have passed since service of the Show Cause Order and neither Respondent nor his counsel has requested a hearing, I conclude that Respondent has waived his right to a hearing. *See* 21 CFR 1301.43(d). I therefore issue this Decision and Final Order without a hearing based on relevant material contained in the investigative file and make the following findings.

Findings

Respondent was the holder of DEA Certificate of Registration, #BR8899809, which authorized him to handle controlled substances in schedules II through V as a practitioner. Respondent's registration expired on April 30, 2007, and Respondent did not file a renewal application until May 30, 2007. I thus find that Respondent did not file a timely renewal application as required to maintain his registration and thus does not have a current registration with the Agency. *See* 5 U.S.C. 558(c). Respondent's renewal application is, however, pending before the Agency.

Respondent previously held another DEA registration. In December 1999, however, Respondent was arrested in Brentwood, Missouri, and charged with fraudulently attempting to obtain Vicodin Tuss, a schedule III controlled substance which contains hydrocodone. Respondent was allowed to plead guilty to the misdemeanor charge of engaging in deceptive business practices and received a suspended sentence. On November 22, 2000, Respondent also surrendered his DEA registration.[2]

According to the investigative file, at approximately 1 p.m. on February 8, 2007, Respondent contacted one of his patients and asked her to assist him in obtaining a narcotic controlled substance for his wife, who he claimed had torn her anterior cruciate ligament (ACL). Respondent asserted that other area physicians were out to get him and that he therefore needed to write the prescription in the patient's name. Several hours later, Respondent met with the patient at her place of employment (an Albertson's supermarket) and gave her a prescription for 90 pills of oxycodone 30 mg and $100 to pay for the prescription.

Later that evening, Respondent returned to the supermarket to obtain the prescription. The patient told

[1] The Return Receipt Card does not indicate the date of delivery. The card does, however, indicate that DEA received the card back on August 13, 2007.

[2] On May 22, 2004, Respondent applied for a new registration. On his application, Respondent disclosed the criminal proceeding, his prior drug abuse, and that he had surrendered his earlier registration. Respondent also stated that he had completed inpatient rehab and a four-year monitoring program. Upon determining that the State of Utah has issued Respondent both a medical license and a controlled substance license, Respondent was granted a new registration.

Respondent that she did not like the situation and was scared. Respondent told her that nothing would happen. The patient then gave the oxycodone and $94 to Respondent. The patient again told Respondent that she did not feel the situation was right; Respondent told her ''nothing happened.'' After a brief conversation, Respondent left.

Nine days later, another police officer received information regarding a July 2006 incident involving Respondent and another of his patients. According to the investigative file, Respondent had performed shoulder surgery on this patient and issued her a prescription for 60 pills of Percocet 10/650, a schedule II controlled substance which contains oxycodone. When the patient became ill taking the Percocet, she saw Respondent to get a prescription for a different drug.

During this visit, Respondent told the patient that the pharmacy had given her the wrong pills. Respondent took the Percocet from the patient and gave her a new prescription for a smaller dose.

Subsequently, the patient asked the pharmacy about the alleged error in the prescription. The pharmacy told her that the error was on Respondent's part. The pharmacy also told her that the Percocet should have been returned to the pharmacy and that the return should have been documented. The pharmacy, however, had no documentation of the Percocet having been returned.

Moreover, according to the investigative file, on two separate dates in December 2006, Respondent induced a physician's assistant (PA) student to fill prescriptions for 90 tablets of oxycodone (30 mg) and 120 tablets of oxycodone (30 mg). Respondent wrote the first prescription in his wife's name and represented to the student that his wife had dislocated her patella tendon. The student filled the prescription and gave it to Respondent.

The second incident occurred on the last day of the student's rotation. During a conversation in which Respondent and the student discussed the possibility of his employing her, Respondent wrote out a prescription and gave it to the student. Upon seeing the prescription, the student remarked ''Oxycodone?'' Respondent told the student to ''chill out'' because it was Percocet with Tylenol. The student then commented about the 30 mg strength of the pills; Respondent stated: ''you'd think if you double the strength you get double the effect, but that isn't the case at all.'' When the student also commented about the number of pills (120), Respondent stated that ''it would last him all year.'' The student proceeded to fill the prescription and provided the oxycodone to Respondent.

In late February 2007, Respondent approached another PA student stating that his wife had injured her ACL, and that he was trying to get her in to see a physician. Over the next several days, Respondent kept telling the student that his wife was in pain and that he was frustrated because he had forgotten to ask one of his colleagues to write a prescription. Respondent also stated that because of bad feelings, he did not believe that other physicians would write his wife a prescription for a pain medication. Respondent eventually induced the student to fill a prescription for 60 tablets of oxycodone (30 mg).

Local law enforcement subsequently interviewed a nurse who worked in the recovery room at a hospital where Respondent performed surgeries. In late July 2006, Respondent approached her, represented that he had severe knee pain, and asked her to fill a prescription for Percocet. The nurse agreed. Respondent wrote the prescription, which was for 90 tablets of Percocet (10 mg), in her name. The nurse filled the prescription and provided the drugs to Respondent.

Over the ensuing seven months, Respondent used additional scams to induce her to fill prescriptions for him such as stating that he had back pain, and that his wife had torn her ACL and that he could not find a doctor to perform surgery on her. On other occasions, Respondent told the nurse that he had wrecked his vehicle and could barely walk. He also told her that his wife's prescription had been stolen or lost down the drain.

Using this person, Respondent obtained a total of fifteen prescriptions for either Percocet (10 mg) or Oxycodone (30 mg).[3] The size of the prescriptions was either 90 or 120 tablets.

On March 14, 2007, Respondent was arrested. Thereafter, on May 9, 2007, the Carbon County Attorney filed six informations against Respondent. As relevant here, the County Attorney charged Respondent with numerous counts of distributing or arranging the distribution of a controlled substance, a felony offense under Utah law. *See* Utah Code Ann. § 58–37–8(1)(a)(ii). The state criminal proceedings remain pending as of the date of this Order.[4]

Discussion

Section 303(f) of the Controlled Substances Act provides that ''[t]he Attorney General may deny an application for [a practitioner's] registration if he determines that the issuance of such registration would be inconsistent with the public interest.'' 21 U.S.C. § 823(f). In making the public interest determination, the Act requires the consideration of 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.

''[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, 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).

Having considered the entire record and all of the factors, I conclude that Respondent's experience in dispensing controlled substances (factor two) and his record of non-compliance with applicable Federal law (factor four) demonstrate that granting Respondent's application for a new registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(f).[5] Accordingly, Respondent's application will be denied.

Respondent's experience in dispensing controlled substances is

[3] In one instance, the strength of the Oxycodone was 15 mg.

[4] The investigative file also includes a copy of the report of a random drug test performed on Respondent on March 28, 2006. According to the report, Respondent tested positive for both hydrocodone and oxycodone; the levels of both drugs exceeded 5000 ng./ml. A document, which is dated March 30, 2007, and which is attached to the report states: ''excessively high quantitative random urine values do not reflect one time use, occasional use, or one time therapeutic use. Such values are consistent with long standing use and habituation.'' While the investigative file establishes that these documents were provided by a hospital where Respondent performed surgeries, the file does not establish the source of the statement. Accordingly, while I accept the results of the drug test, which showed that both hydrocodone and oxycodone were present in Respondent, I do not rely on the statement as to what the quantitative values establish.

[5] In light of my findings with respect to factors two and four, I conclude that it is unnecessary to make findings with respect to the remaining factors.

characterized by his criminal behavior in issuing numerous fraudulent prescriptions for such highly abused controlled substances as oxycodone and Percocet. While the record contains no information as to whether under Utah law and regulations, a physician can ever lawfully prescribe a controlled substance to a family member or himself, it is clear that Respondent issued numerous fraudulent prescriptions because the prescriptions were written in the names of persons who had no medical need for the controlled substance, and who were, after filling the prescription, to turn the drugs over to him.

Moreover, the stories that Respondent told to induce others to assist him were so implausible (*e.g.*, that no doctor would write a prescription for, or perform surgery on, his wife) or were consistent with classic scams engaged in by persons who seek controlled substances for illicit purposes (*e.g.*, that his wife's prescription had been stolen or lost down the drain), that it is clear that the prescriptions were written with fraudulent intent. *See Randi M. Germaine*, 72 FR 51665, 61666 (2007) (noting expert testimony regarding use of scams by drug abusers seeking additional drugs such as early refill attempts and claiming that one's drugs have been stolen).

This conduct violated Federal law. *See* 21 U.S.C. 843(a)(3) (rendering it ''unlawful for any person knowingly or intentionally * * * to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge''); *id.* § 844(a) (''It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this subchapter * * *.''). Indeed, it is particularly disturbing that Respondent was aided in his schemes by several health care professionals.

There is also substantial evidence that Respondent was personally abusing the drugs he obtained through his various schemes. The urinalysis results indicated that Respondent was using both hydrocodone and oxycodone. Moreover, when one of the PA students commented about his seeking oxycodone, Respondent told her to ''chill out,'' because it was Percocet with Tylenol. Moreover, when the student commented about the strength of the pills, Respondent stated that ''you'd think if you double the strength you get double effect, but that isn't the case,'' and also said that the 120 pills ''would last him all year.'' It is thus clear that Respondent was once again abusing controlled substances.

Respondent's experience in dispensing controlled substances and his record of non-compliance with Federal controlled substance laws is thus characterized by his issuance of numerous fraudulent prescriptions and his personal abuse of controlled substances. These findings amply demonstrate that Respondent cannot be entrusted with a new registration and that granting his application would be ''inconsistent with the public interest.'' 21 U.S.C. 823(f).

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b) & 0.104, I order that the application of Randall Relyea, D.O., for a DEA Certificate of Registration as a practitioner be, and it hereby is, denied. This order is effective August 13, 2008.

Dated: June 27, 2008.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E8–15923 Filed 7–11–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Armando B. Figueroa, M.D.; Revocation of Registration

On November 14, 2007, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Armando B. Figueroa, M.D. (Respondent), of Washington, DC. The Order immediately suspended and proposed the revocation of Respondent's DEA Certificate of Registration, BF0128810, as a practitioner, on the grounds that his continued registration was ''inconsistent with the public interest'' and ''constitute[d] an imminent danger to public health and safety.'' Show Cause Order at 1 (citing 21 U.S.C. 823(f) & 824(a)(4)).

The Show Cause Order alleged that Respondent had ''repeatedly issued controlled substance prescriptions to [two individuals, S.S. and G.R.] for other than a legitimate medical purpose or while acting outside the usual course of professional practice in violation of 21 CFR 1306.04(a).'' Show Cause Order at 1. More specifically, the Show Cause Order alleged that on October 17, 2007, law enforcement authorities had searched a hotel room occupied by S.S. and found 500 dosage units of oxycodone, 630 dosage units of OxyContin, 400 dosage units of methadone, 180 dosage units of diazepam, and 30 dosage units of phentermine. *Id.* at 2. The Order also alleged that S.S. had in her possession eleven undated prescriptions for OxyContin and three prescriptions for methadone which Respondent had issued in the names of S.S. and G.R., two additional prescriptions for Oxycontin issued by Respondent on October 15, 2007 to S.S. and G.R., and ''$7,475.00 in cash.'' *Id.* Finally, the Order alleged that S.S. told law enforcement officers that she paid Respondent $100 for each prescription he issued and that Respondent had not physically examined her in years. *Id.*

Based on the above, I found that Respondent had ''repeatedly issued controlled substance prescriptions outside the usual course of professional practice, and for other than a legitimate medical purpose, [and was] thereby facilitating the diversion of controlled substances.'' *Id.* Accordingly, I further found that Respondent's ''continued registration during the pendency of these proceedings would constitute an imminent danger to public health and safety,'' and ordered the immediate suspension of his registration. *Id.* (citing 21 U.S.C. 824(d)).

On November 14, 2007, DEA Investigators served the Order to Show Cause and Immediate Suspension [1] by leaving it at Respondent's office and registered location. Later that same day, Respondent telephoned a DEA Investigator to complain about the suspension of his registration. Subsequently, DEA Investigators learned that on the days that Respondent worked at his Washington office, Respondent stayed at his daughter's house. Accordingly, on November 29, 2007, DEA Investigators also delivered a copy of the Order to Show Cause and Immediate Suspension to Respondent's daughter at her residence.

Since the service of the Order to Show Cause and Immediate Suspension, neither Respondent, nor any one purporting to represent him, has requested a hearing. Because (1) more than thirty days have passed since the Order was served, and (2) no request for a hearing has been received, I conclude that Respondent has waived his right to a hearing. *See* 21 CFR 1301.43(d). I

[1] The Order also fully explained that Respondent had a right to a hearing, the scheduled date of the hearing, the procedures for requesting a hearing, and that his failure to timely request a hearing would be deemed a waiver of his right. Show Cause Order at 2–3.

therefore enter this Final Order without a hearing based on relevant material contained in the investigative file, *see id.* 1301.43(e), and make the following findings.

Findings

Respondent is the holder of DEA Certificate of Registration, BF0128810, which authorized him (before I suspended the registration) to handle controlled substances in schedules II through V as a practitioner at his registered location in Washington, DC. Respondent's registration does not expire until September 30, 2010.

During 2007, a DEA Investigator (DI) acquired physician prescribing profiles from several Washington, DC area pharmacies. The profiles showed that Respondent was prescribing large quantities of schedule II narcotic controlled substances including Percocet and OxyContin (80 mg), both of which contain oxycodone. 21 CFR 1308.12(b)(1).[2] Several pharmacists advised that a large number of young and seemingly healthy individuals were presenting the prescriptions, that these persons always paid cash for the prescriptions, and that they were traveling large distances to fill the prescriptions.

In April 2007, an Inspector with the South Carolina Bureau of Drug Control notified the DI that G.R. and S.S., who were residents of Conway, South Carolina and who lived together, were presenting to local pharmacies a large number of prescriptions for OxyContin and Percocet that were issued by Respondent. The Inspector related that when local pharmacists called Respondent to verify the prescription, Respondent would tell them to fill the prescription without even waiting to hear the patient's name or the drug that was prescribed. Moreover, most of the prescriptions were paid for with cash. The Inspector further advised that she had obtained from area pharmacies approximately 100 OxyContin prescriptions which Respondent had issued to S.S. between December 2005 and September 2006.

The DEA Investigator further determined that S.S. and G.R. had previously lived in La Plata, Maryland, but had moved to South Carolina in 2001. S.S. would nonetheless make the twelve-hour round trip from South Carolina to Washington periodically to obtain prescriptions from Respondent. The investigation further showed that while unemployment taxes had not been paid on either S.S. or G.R. since 2001, between January 17 and October 16, 2007, S.S. and G.R. had paid a total of more than $42,000 in cash to various pharmacies in South Carolina and Maryland to obtain oxycodone (80 mg), OxyContin (80 mg), oxycodone/acetaminophen (5/325 mg) and methadone (40 mg), based on prescriptions issued by Respondent. The record further establishes that OxyContin (80 mg) has a street value of $70 to $80 a pill and that the total street value of the OxyContin prescribed by Respondent to S.S. and G.R. during this period was between $352,800 and $403,200.

On October 16, 2007, a Waldorf, Maryland pharmacy contacted the DI and informed her that S.S. had presented a prescription for ninety tablets of OxyContin (80 mg) issued by Respondent. The DI asked the pharmacist not to fill the prescription and to tell S.S. to come back later.

The DI then contacted three other Waldorf pharmacies which S.S. and G.R. had previously used. At each of the pharmacies, the DI was told that S.S. had presented a prescription issued by Respondent for 90 tablets of OxyContin (80 mg). At two of the pharmacies, S.S. had also told the pharmacists that she would pay cash, notwithstanding that the cost of the prescription was in excess of $1,000, and would pick up the prescription the following day. At the third pharmacy, S.S. had already picked up the prescription for which she paid $1,134 in cash.

Thereafter, the DI requested the assistance of narcotics officers with the Charles County Sheriff's Office to conduct surveillance of S.S. The Detectives agreed and went to one of the pharmacies. There, they observed S.S. arrive in a vehicle with South Carolina license plates and enter the pharmacy. The Detectives observed S.S. as she picked up the prescription and paid for it with $985.70 in cash. The Detectives then followed S.S. to a local hotel, which she entered. The Detectives contacted the hotel and determined that S.S. was scheduled to depart on October 19. The Detectives were also told that S.S. had paid cash for her room.

The next day, the Detectives obtained warrants to search S.S.'s hotel room and vehicle, as well as to arrest her on state charges of possession of Oxycontin with intent to distribute and possession of a control dangerous substance. Shortly thereafter, the Detectives executed the search warrants and arrested S.S.

The Detectives found that S.S had in her possession $7,475 in cash, 500 dosage units of oxycodone/acetaminophen (5/325 mg), 630 dosage units of OxyContin (80 mg), 180 dosage units of diazepam (10 mg), 30 dosage units of phentermine (37.5 mg), six dosage units of phentermine (30 mg), and 400 dosage units of methadone. Moreover, S.S. had in her possession seventeen prescriptions from Respondent, including fifteen which were undated. Nine of the prescriptions were in S.S.'s name; the other eight were written in G.R.'s name.

Seven of S.S.'s prescriptions (including six of the undated ones) were for 90 tablets of OxyContin (80 mg); the other two were for 120 tablets of methadone (40 mg). Five of G.R.'s prescriptions (including four of the undated ones) were for 90 tablets of OxyContin (80 mg), another prescription was for 180 tablets of OxyContin (80 mg), and one was for 90 tablets of methadone (40 mg).[3]

During the search, the Detectives found in the trash numerous prescription labels which had been torn off the bottles. They also found a piece of paper which according to S.S., was a shopping list of the prescriptions that she had sought from Respondent.

During a post-arrest interview, S.S. stated that Respondent charges $100 cash for each prescription, that she had purchased as many as twenty prescriptions from him at a time, that the prescriptions were not dated, and that Respondent had not physically examined her in years. She also stated that she could not remember the last time Respondent was examined by Respondent and that G.R. rarely traveled to Washington, DC. S.S. further stated that she would call Respondent to order the prescriptions and that she would pay Respondent's assistant; S.S. did not, however, obtain a receipt. S.S. also stated that Respondent was giving her methadone because she was trying to wean herself off of OxyContin.

Discussion

Section 304(a) of the Controlled Substances 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)(4). In making the public interest determination, the Act requires the consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

[2] These drugs are typically prescribed to persons in severe pain but are also highly abused.

[3] The remaining prescription issued to G.R. was for a non-controlled drug.

(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.

''[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, 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).[4]

Having considered all of the factors, I conclude that the evidence under factors two and four is dispositive and establishes that Respondent has committed acts which render his continued registration ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). Accordingly, Respondent's registration will be revoked.

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Record of Compliance With Applicable Laws

Under DEA regulations, a prescription for a controlled substance is not ''effective'' unless it is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). This regulation further provides that ''an order purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning and intent of [21 U.S.C. 829] and * * * the person issuing it, shall be subject to the penalties provided for violations of the provisions of law related to controlled substances.'' *Id.* 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*, 126 S.Ct. 904, 925 (2006) (citing *Moore*, 423 U.S. 122, 135 (1975)).

The evidence in this case overwhelmingly demonstrates that Respondent used his prescribing authority to engage in the criminal distribution of controlled substances in violation of 21 U.S.C. 841. The statements of S.S. and the evidence uncovered in the course of the investigation make plain that Respondent was engaged in out-and-out drug pushing and not the legitimate practice of medicine.[5]

More specifically, at a single visit, Respondent issued multiple prescriptions for highly abused schedule II controlled substances, which were undated and thus in violation of DEA regulations for this reason as well. *See* 21 CFR 1306.05.[6] Respondent did not examine S.S.; he also issued multiple prescriptions in the name of G.R., without even seeing him. Finally, S.S. would purchase from Respondent as many as twenty prescriptions at a time and pay cash for which no receipt was provided. In short, Respondent's conduct was not remotely consistent with the legitimate practice of medicine. Rather, it was drug pushing.

I thus conclude that Respondent's experience in dispensing controlled substances and his record of repeatedly violating Federal law and regulations make clear that his continued registration ''is inconsistent with the public interest.'' 21 U.S.C. 823(f). Finally, for the same reasons which led me to find that Respondent posed ''an imminent danger to the public health or safety,'' *id.* § 824(d), I conclude that the public interest requires that his registration be revoked effective immediately and that any pending applications be denied. *See* 21 CFR 1316.67.

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 Registration, BF0128810, issued to Armando B. Figueroa, M.D., be, and it hereby is, revoked. I further order that any pending application for renewal or modification of the registration be, and it hereby is, denied. This order is effective immediately.

Dated: July 2, 2008.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E8–15922 Filed 7–11–08; 8:45 am]

BILLING CODE 4410–09–P

[4] Under section 304(d), the ''[t]he Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health or safety.'' 21 U.S.C. 824(d).

[5] Given the evidence, this is not a case which requires either expert testimony to support findings regarding whether Respondent prescribed pursuant to a valid doctor-patient relationship or an analysis of state standards pertaining to the practice of medicine. In short, Respondent's conduct does not remotely resemble the legitimate practice of medicine.

[6] The 80 mg strength is the second strongest dosage unit of Oxycodone and typically has a street value of $80 per tablet.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 08–8]

Michael Chait, M.D.; Revocation of Registration

On October 1, 2007, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Michael Chait, M.D. (Respondent), of Amagansett, New York. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BC2825151, as a practitioner, and the denial of any pending applications to renew or modify his registration, on the ground that Respondent is ''not authorized to handle controlled substances in New York.'' Show Cause Order at 1.

More specifically, the Show Cause Order alleged that effective on May 25, 2007, the New York State Department of Health, State Board for Professional Medical Conduct, had, pursuant to an interim non-disciplinary order of conditions, prohibited Respondent from the practice of medicine in the State of New York. *Id.* The Show Cause Order thus alleged that Respondent is ''no longer authorized to handle controlled substances in New York, the state in which'' he maintains his DEA registration. *Id.* The Show Cause Order further alleged that Respondent ''failed to surrender [his] DEA Certificate of Registration as required'' under the terms of the State Board's order. *Id.*

Respondent requested a hearing on the allegations and the matter was assigned to Administrative Law Judge (ALJ) Gail Randall. Thereafter, the Government moved for summary disposition on the ground that under the terms of the State Board's order, Respondent was prohibited from practicing medicine and thus could not prescribe a drug. Gov. Mot. at 1–2. The Government therefore argued that there was no dispute that Respondent is not authorized to handle controlled substance in New York, the jurisdiction in which he maintains his DEA registration and that under Federal law, ''DEA cannot register a practitioner to

handle controlled substances who is without authority to handle controlled substances in the State in which he practices'' medicine. *Id.* at 2 (citing 21 U.S.C. 823(f)).

In support of its motion, the Government attached a copy of the Interim Order. The Interim Order specifically stated that Respondent ''shall be precluded from all patient contact and any practice of medicine, clinical or otherwise. Licensee shall be precluded from diagnosing, treating, operating, or prescribing for any human disease, pain, injury, deformity, or physical condition.'' *In re Chait*, Stipulation and Application for an Interim Non-Disciplinary Order of Conditions Pursuant to N.Y. Pub. Health Law § 230, at 3. The Interim Order also directed Respondent to ''surrender [his] Controlled Substance Registration Certificate to the United States Department of Justice, Drug Enforcement Administration, within 15 days of the effective date of this Order.'' *Id.* at 4.[1]

Although the ALJ ordered Respondent to respond by November 20, 2007, he did not. The ALJ then granted the Government's motion.

The ALJ observed that while the Interim Order did not ''make any findings of misconduct as to the matters under investigation, it does prohibit the Respondent from having any patient contact and from practicing medicine.'' ALJ Dec. at 3. The ALJ also explained that ''the Board's Order clearly states that the Respondent is barred from diagnosing, treating, operating, or prescribing for any human disease, pain, injury, deformity, or physical condition, and is required to surrender his DEA Registration * * * within 15 days of the effective date of the Board's Order.'' *Id.* The ALJ thus ''conclude[d] that * * * Respondent currently lacks authority to practice medicine in the State of New York or to prescribe controlled substances in that State.'' *Id.* Because DEA lacks authority under the Controlled Substances Act to register (and to continue an existing registration of) a practitioner who lacks authority under state law to handle controlled substances, the ALJ recommended that Respondent's registration be revoked. Id. at 4–5 (citing cases). The ALJ then forwarded the record to me for final agency action.

Having considered the record as a whole, I adopt the ALJ's decision in its entirety. I find that Respondent holds a current registration which does not expire until August 31, 2009. I further find that effective May 17, 2007, the New York State Department of Health, State Board for Professional Medical Conduct, issued an Interim Order which precludes Respondent from practicing medicine and prescribing drugs, Interim Order at 3, and that this Order remains in effect. Therefore, even though Respondent's state medical license has not been suspended or revoked, it is clear that he is not permitted to handle controlled substances in the State of New York, the State in which he holds his DEA registration.[2]

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled substances in ''the jurisdiction in which he practices'' in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) (''[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice''). *See also id.* § 823(f) (''The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). As these provisions make plain, possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration.

That the State has not formally revoked or suspended Respondent's state license is not dispositive. Because Respondent is not ''authorized under'' state law, ''or otherwise permitted[] by * * * the jurisdiction in which he practices'' to handle controlled substances ''in the course of professional practice,'' and is in fact currently precluded from engaging in the practice of medicine, he is not entitled to hold a registration under the CSA. *See Julian A. Abbey, M.D.*, 72 FR 10788, 10788–89 (2007) (revoking registration of practitioner who had entered into a voluntary agreement with the State to cease the practice of medicine). Accordingly, Respondent's registration will be revoked.

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, BC2825151, issued to Michael Chait, M.D., be, and it hereby is, revoked. I further order that any pending application of Michael Chait, M.D., for renewal or modification of his registration be, and it hereby is, denied. This order is effective August 13, 2008.

Dated: July 2, 2008.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E8–15938 Filed 7–11–08; 8:45 am]

BILLING CODE 4410–09–P

[1] The Government also attached a copy of a webpage maintained by the N.Y. Department of Health, entitled ''Professional Misconduct and Physician Discipline.'' This document indicates that the Interim Order precludes Respondent from the clinical practice of medicine in New York State ''until the final disposition of the current investigation being conducted by the New York State Office of Professional Medical Conduct.''

[2] I further note that there is no evidence that Respondent has surrendered his DEA registration.

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 6–08]

Sunshine Act Meetings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Thursday, July 31, 2008, at 10:30 a.m.

SUBJECT MATTER: Issuance of Proposed Decisions, Amended Proposed Decisions, and Orders in claims against Albania.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Mauricio J. Tamargo,

Chairman.

[FR Doc. 08–1431 Filed 7–10–08; 3:20 pm]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Proposed Amendment to PTE 84–14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration is soliciting comments on the proposed extension of the information collection provisions of Proposed Amendment to PTE 84–14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers. A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before September 9, 2008.

ADDRESSES: Joseph S. Piacentini, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

PTE 84–14 is a class exemption from ERISA's prohibited transaction rules that permits various parties that are related to employee benefit plans to engage in transactions involving plan assets if, among other conditions, the assets are managed by ''qualified professional asset managers'' (QPAMs), which are independent of the parties in interest and which meet specified financial standards. Additional exemptive relief is provided for employers to furnish limited amounts of goods and services to a managed fund in the ordinary course of business. Limited relief also is provided for leases of office or commercial space between managed funds and QPAMs or contributing employers. Finally, relief is provided for transactions involving places of public accommodation owned by a managed fund.

The proposed amendment to PTE 84–14 (70 FR 49305, August 23, 2005) would permit a ''qualified professional asset manager'' (QPAM) to prospectively manage an investment fund containing the assets of its own employee benefit plan or the plan of an affiliate, to the extent that the conditions of the proposal have been met. Under section 406(a) of ERISA, sales, leases, loans or the provision of services between a party in interest and a plan, as well as a use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest, is prohibited. Section 408(a) of ERISA permits the Department to grant an exemption from a prohibited transaction provision where it has been able to determine that certain criteria for granting such exemptions have been satisfied. Without the proposed amendment, a financial institution that acted as a QPAM for its own plan, prospectively, would be in violation of section 406(a).

In order for a transaction to qualify for an exemption under the proposed amendment, a QPAM must, among other requirements, establish written policies and procedures that are designed to assure compliance with the conditions of the proposed amendment, including the steps adopted by the QPAM to measure compliance. The proposed amendment also requires an independent auditor required to conduct an exemption audit, on an annual basis, the results of which are presented in a written report to the plan.

These requirements constitute an information collection within the meaning of the PRA, for which the Department has obtained approval from the Office of Management and Budget (OMB) under OMB Control No. 1210–0128. The OMB approval is currently scheduled to expire on October 31, 2008.

II. Current Actions

This notice requests public comment pertaining to the Department's request for extension of OMB approval of the information collection contained in the proposed amendment to PTE 84–14. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Proposed Amendment to Prohibited Transaction Class Exemption 84–14.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0218.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 6,500.

Responses: 6,500.

Estimated Total Burden Hours: 6,500.

Estimated Total Burden Cost (Operating and Maintenance): $546,000.

III. Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: July 8, 2008.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E8–15848 Filed 7–11–08; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,875]

Bolton Metal Products Co., Including On-Site Leased Workers of Adecco Staffing, Bellefonte, PA; Amended Notice of Revised Determination on Reconsideration

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Notice of Revised Determination on Reconsideration on May 9, 2008. The notice was published in the **Federal Register** on May 15, 2008 (72 FR 28169–28170).

At the request of the petitioners, the Department reviewed the Notice of Revised Determination on Reconsideration for workers of the subject firm. The workers are engaged in the production of brass rod, wire and low melt alloys. The workers are separately identifiable by product line.

New information shows that leased workers of Adecco Staffing were employed on-site at the Bellefonte, Pennsylvania location of Bolton Metal Products, Co. The Department has determined that these workers were sufficiently under the control of Bolton Metal Products Co. to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Adecco Staffing working on-site at the Bellefonte, Pennsylvania location of the subject firm.

The intent of the Department's certification is to include all workers employed at Bolton Metal Products Co., Bellefonte, Pennsylvania who were adversely-impacted by increased imports of brass rod, wire, and low melt alloys.

The amended notice applicable to TA–W–62,875 is hereby issued as follows:

All workers of Bolton Metal Products Co., including on-site leased workers of Adecco Staffing, Bellefonte, Pennsylvania, who became totally or partially separated from employment on or after February 18, 2007, through May 9, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 26th day of June 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15861 Filed 7–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,699]

Filtronic Comtek, Inc., Currently Known as Powerwave Technologies, Inc., Including On-Site Leased Workers From Quality Staffing Services, Salisbury, MD; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 13, 2007, applicable to workers of Filtronic Comtek, Inc., including on-site leased workers from Quality Staffing Services, Salisbury, Maryland. The notice was published in the **Federal Register** on February 27, 2007 (72 FR 8795).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of microwave filters for cellular telephone base stations.

New information shows that following a change in ownership in October 2006, Filtronic Comtek, Inc. is currently known as Powerwave Technologies, Inc. Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Powerwave Technologies, Inc.

Accordingly, the Department is amending this certification to show that Filtronic Comtek, Inc. is currently known as Powerwave Technologies, Inc.

The intent of the Department's certification is to include all workers of Filtronic Comtek, Inc., currently known as Powerwave Technologies, Inc., who were adversely affected by a shift in production to China.

The amended notice applicable to TA–W–60,699 is hereby issued as follows:

All workers of Filtronic Comtek, Inc., currently known as Powerwave Technologies, Inc., including on-site leased workers from Quality Staffing Services, Salisbury, Maryland, who became totally or partially separated from employment on or after January 3, 2006, through February 13, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 27th day of June 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15858 Filed 7–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,931]

Tyco Electronics Including On-Site Leased Workers From Kelly Staffing and Diversco East Berlin, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 4, 2007, applicable to workers of Tyco Electronics, including on-site leased workers of Kelly Staffing, East Berlin, Pennsylvania. The notice was published in the **Federal Register** on October 17, 2007 (72 FR 58898).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of electronic connectors.

New information shows that leased workers of Diversco were employed on-site at the East Berlin, Pennsylvania, location of Tyco Electronics. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Diversco working on-site at the East Berlin, Pennsylvania, location of the subject firm.

The intent of the Department's certification is to include all workers employed at Tyco Electronics who were adversely affected by increased imports of electronic connectors.

The amended notice applicable to TA–W–61,931 is hereby issued as follows:

''All workers of Tyco Electronics, including on-site leased workers from Kelly Staffing and Diversco, East Berlin, Pennsylvania, who became totally or partially separated from employment on or after August 2, 2006, through October 4, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 27th day of June 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15859 Filed 7–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,833; TA–W–62,833A]

Megtec Systems, Inc. a Subsidiary of Sequa Corporation Depere, WI; Including an Employee in Support of Megtec Systems, Inc. a Subsidiary of Sequa Corporation, Depere, WI Working out of Fayetteville, GA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 16, 2008, applicable to workers of Megtec Systems, Inc., a subsidiary of Sequa Corporation, DePere, Wisconsin. The notice was published in the **Federal Register** on May 29, 2008 (73 FR 30977).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm.

New information shows that a worker separation has occurred involving an employee (Mr. Eugene Barry Lewis) working out of Fayetteville, Georgia, in support of and under the control of Megtec Systems, Inc., a subsidiary of Sequa Corporation, in DePere, Wisconsin.

Based on these findings, the Department is amending this certification to include an employee in support of the DePere, Wisconsin location of the subject firm working out of Fayetteville, Georgia.

The intent of the Department's certification is to include all workers of Megtec Systems, Inc., a subsidiary of Sequa Corporation, DePere, Wisconsin who were adversely affected by increased imports of air flotation drying, pollution control and paper handling equipment.

The amended notice applicable to TA–W–62,833 is hereby issued as follows:

''All workers of Megtec Systems, Inc., a subsidiary of Sequa Corporation, DePere, Wisconsin (TA–W–62,833), including an employee in support of Megtec Systems, Inc., a subsidiary of Sequa Corporation, DePere, Wisconsin, working out of Fayetteville, Georgia (TA–W–62,833A), who became totally or partially separated from employment on or after February 11, 2007, through May 16, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 26th day of June 2008.

Linda G. Poole

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15860 Filed 7–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,085; TA–W–63,085A]

Trimtex Co., Inc., Williamsport, PA; Novtex Division of Trimtex Co., Inc., Adams, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 24, 2008, applicable to workers of Trimtex Co., Inc., Williamsport, Pennsylvania. The notice was published in the **Federal Register** on May 13, 2008 (73 FR 27560).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of decorative trimmings.

New findings show that worker separations occurred at the Novtex Division of Trimtex Co., Inc., Adams, Massachusetts. Workers at the Adams, Massachusetts facility provide sales, inventory control, product development, design and sourcing and various other activities supporting the production of decorative trimmings that is produced at the Williamsport, Pennsylvania location of the subject firm.

Accordingly, the Department is amending the certification to cover workers at Novtex Division of Trimtex Co., Inc., Adams, Massachusetts.

The intent of the Department's certification is to include all workers of Trimtex Co., Inc. who were adversely affected by a shift in production of decorative trimmings to Mexico and China.

The amended notice applicable to TA–W–63,085 is hereby issued as follows:

''All workers of Trimtex Co., Inc., Williamsport, Pennsylvania (TA–W–63,085), and Novtex Division of Trimtex Co., Inc., Adams, Massachusetts (TA–W–63,085A), who became totally or partially separated from employment on or after March 24, 2007, through April 24, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 26th day of June 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15863 Filed 7–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,155]

Amphenol–TCS a Subsidiary of Amphenol Corporation Including On-Site Temporary Workers From Microtech and Triton Staffing Nashua, NH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for

Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 12, 2008, applicable to workers of Amphenol–TCS, a subsidiary of Amphenol Corporation, Nashua, New Hampshire. The notice was published in the **Federal Register** on May 29, 2008 (73 FR 30977).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of electronic connectors and backplane assemblies. The workers are separately identifiable by articles produced.

New information shows that temporary workers from Microtech and Triton Staffing were employed on-site at the Nashua, New Hampshire location of Amphenol–TCS, a subsidiary of Amphenol Corporation. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered temporary workers.

Based on these findings, the Department is amending this certification to include temporary workers from Microtech and Triton Staffing working on-site at the Cleveland, Ohio location of the subject firm.

The intent of the Department's certification is to include all workers employed at Amphenol–TCS, a subsidiary of Amphenol Corporation who were adversely affected by a shift in production of backplane assemblies to Mexico.

The amended notice applicable to TA–W–63,155 is hereby issued as follows:

''All workers of Amphenol–TCS, a subsidiary of Amphenol Corporation, including on-site temporary workers from Microtech and Triton Staffing, engaged in the production of backplane assemblies, Nashua, New Hampshire, who became totally or partially separated from employment on or after March 11, 2007, through May 12, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC this 27th day of June 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15865 Filed 7–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of June 16 through June 20, 2008.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) Contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact

date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–63,367; Novatech Electro-Luminescent, Chino,CA: May 6, 2007.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–63,435; Gold Shield Inc., RV Group, Subsidiary of Fleetwood Enterprises, Inc., Riverside, CA: May 5, 2007.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,395; Methode Electronics, Inc., Connector Products, Source One Staffing, Rolling Meadows, IL: May 15, 2007.

TA–W–63,459; Chaco, Inc., Paonia, CO: May 31, 2007.

TA–W–63,460; A S America Incorporated, Salem Facility, American Standard, Inc, Salem, OH: May 30, 2007.

TA–W–62,828; JMS Converters/Sabee Products, Appleton, WI: January 28, 2007.

TA–W–63,174; Harvey Industries, LLC, Wabash, IN: April 9, 2007.

TA–W–63,261; Simpson Timber Company, Shelton, WA: April 17, 2007.

TA–W–63,262; Simpson Timber Company, Commencement Bay Operations Division, Tacoma,WA: April 17, 2007.

TA–W–63,288; Sigma Industries, Inc., Arcadia Staffing, United Employment, Quality Staffing, Springport, MI: April 30, 2007.

TA–W–63,290; LB Furniture Industries, LLC, Hudson, NY: April 29, 2007.

TA–W–63,346; Tower Automotive, Kendallville, IN: October 28, 2007.

TA–W–63,369; Wisconsin Die Casting, Milwaukee, WI: April 28, 2007.

TA–W–63,370; Ranger Industries, South Montrose, PA: May 6, 2007.

TA–W–63,379; Plastech Engineered Products Inc., Interior Division, Shreveport, LA: May 12, 2007.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,177; Joseph T Ryerson & Son, Inc., Chicago Service Center, Chicago, IL: April 8, 2007.

TA–W–63,313; Simclar (North America), Inc., Executive Personnel, Action Staffing, Kelly Services, Winterville, NC: May 5, 2007.

TA–W–63,380; LZB Manufacturing, Tremonton, UT: May 13, 2007.

TA–W–63,423; American Axle and Manufacturing, Tonawanda Forge Plant, Adecco, Tonawanda, NY: May 21, 2007.

TA–W–63,425; Steris Corporation, Healthcare-Erie Operations Division, Erie, PA: May 26, 2008.

TA–W–63,432; Kongsberg Automotive, Driveline Systems Division, People Link, Staffing Sol, Van Wert, OH: May 8, 2007.

TA–W–63,434; Plastech Engineered Products, Exterior Division, Byesville, OH: May 23, 2007.

TA–W–63,464; Dura Automotive Systems, On-Site Leased Workers of Spherion Co., Galdwin, MI: May 30, 2007.

TA–W–63,477; Kwikset Corporation, Nickel Plating Department, Kelly Services, Denison, TX: June 2, 2007.

TA–W–63,491; Sensus Metering Systems, Uniontown, PA: June 5, 2007.

TA–W–63,371; Sumitomo Electric Wintec America, Edmonton, KY: May 9, 2007.

TA–W–63,408; Milwaukee Electric Tool Corp., Blytheville, AR: May 19, 2007.

TA–W–63,421; Kimble Chase, LLC, Vineland, NJ: May 19, 2007.

TA–W–63,439; Watson Laboratories, Inc., A Connecticut Corporation, Carmel, NY: May 27, 2007.

TA–W–63,437; Tytex, Inc., Woonsocket, RI: May 27, 2007.

TA–W–63,493; Evergy, Inc., Vitrus Division, Pawtucket, RI: June 5, 2007.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,139; Valspar—Furniture Sales Group & Int'l Color Design Center, D/B/A Engineered Polymer Solutions, High Point, NC: May 6, 2007.

TA–W–63,139A; Valspar—Furniture Sales Group & Int'l Color Design Center, D/B/A Engineered Polymer Solutions, Orangeburg, SC: April 4, 2007.

TA–W–63,139B; Valspar—Furniture Sales Group & Int'l Color Design Center, D/B/A Engineered Polymer Solutions, Montebello, CA: April 4, 2007.

TA–W–63,139C; Valspar—Furniture Sales Group & Int'l Color Design Center, D/B/A Engineered Polymer Solutions, South Seattle,WA: April 4, 2007.

TA–W–63,330; Spectrum Yarns, Inc., Marion, NC: May 6, 2007.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

TA–W–63,367; Novatech Electro-Luminescent, Chino, CA.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–63,435; Gold Shield Inc., RV Group, Subsidiary of Fleetwood Enterprises, Inc., Riverside, CA.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–63,115; Granite Knitwear, Inc., Granite Quarry, NC.

TA–W–63,377; Agilent Technologies, Inc., Electronic Instrument Business Unit, Santa Rosa, CA.

TA–W–63,381; Merix Corporation, Forest Grove, OR.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–63,498; Westland Controls Systems Incorporated, O.P. Six, Inc., Westland, MI.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–62,910; The Hoover Company, Division of TTI Floorcare, El Paso, TX.

TA–W–62,930; ACE Style Intimate Apparel, Inc., New York, NY.

TA–W–63,151; Kretz Lumber Company, Inc., Dimension Plant, Antigo, WI.

TA–W–63,315; Performance Fibers Operations, Inc., Salisbury, NC.

TA–W–63,341; Baja Marine Corporation, Division of Brunswick Corporation, Bucyrus, OH.

TA–W–63,368; Eco Building Systems, LLC, Oxford, ME.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–63,540; Sento Corporation, Raleigh, NC.

TA–W–63,049; Cardinal Health Inc., Medical Products—Convertors, Select Staffing, El Paso, TX.

TA–W–63,084; Prime Health Care, West Anaheim, CA.

TA–W–63,084A; Prime Health Care, Huntington Beach, CA.

TA–W–63,084B; Prime Health Care, LaPalma, CA.

TA–W–63,392; First American Real Estate Tax Service, LLC, Exton, PA.

TA–W–63,414; Uster Technologies, Inc., Charlotte, NC.

TA–W–63,461; Logistic Services, Inc., Janesville, WI.

TA–W–63,481; Compucom Sytems, Inc., Pfizer Help Desk Operations, Parsippany, NJ.

TA–W–63,497; Decoro USA, Ltd, High Point, NC.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

TA–W–63,238; Alliance Industries, Inc., Troy, IN.

I hereby certify that the aforementioned determinations were issued during the period of June 16 through June 20, 2008. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 30, 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15857 Filed 7–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 24, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 24, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 2nd day of July 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 6/23/08 and 6/27/08]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63577	Russell Corporation/Coosa River (Comp)	Wetumpka, AL	06/23/08	06/20/08
63578	Gibbs Die Casting (Comp)	Henderson, KY	06/23/08	06/20/08
63579	Alcatel-Lucent (Comp)	Oklahoma City, OK	06/23/08	06/13/08
63580	Credit Payment Services, Inc. (Wkrs)	Reno, NV	06/23/08	06/20/08

APPENDIX—Continued

[TAA petitions instituted between 6/23/08 and 6/27/08]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63581	Varian Semiconductor Equipment (Comp)	Gloucester, MA	06/23/08	06/18/08
63582	Actuant Power Packer (State)	Milwaukee, WI	06/23/08	06/23/08
63583	Dicon Fiber Optics, Inc. (State)	Richmond, CA	06/23/08	06/07/08
63584	NxStage Medical, Inc. (Comp)	Lawrence, MA	06/24/08	06/23/08
63585	Black Dot/CAPS Group Acquisition (Wkrs)	Crystal Lake, IL	06/24/08	06/23/08
63586	EPCO LLC (Wkrs)	Fremont, OH	06/24/08	06/11/08
63587	SAF Holland, Inc. (Comp)	Holland, MI	06/24/08	06/10/08
63588	Hermle Uhren GHBH and Co. (Wkrs)	Amherst, VA	06/24/08	06/23/08
63589	Delfingen US, Inc. (Comp)	San Antonio, TX	06/24/08	06/24/08
63590	General Fibers and Fabrics, Inc. (Comp)	LaGrange, GA	06/24/08	06/17/08
63591	Southwest Metal Finishing, Inc. (Wkrs)	New Berlin, WI	06/24/08	06/23/08
63592	Intermet Corporation (Wkrs)	Pulaski, TN	06/24/08	06/16/08
63593	Minco Manufacturing, LLC (Comp)	Colorado Springs, CO	06/24/08	06/20/08
63594	Hanes Industries (Comp)	Newton, NC	06/24/08	06/23/08
63595	Connectivity Technologies, Inc. (Wkrs)	Carrollton, TX	06/24/08	06/21/08
63596	Medtronic Vascular (State)	Danvers, MA	06/24/08	06/23/08
63597	Murpac of Indiana, LLC (Comp)	Remington, IN	06/25/08	06/19/08
63598	Bemcore Tool, Inc. (Wkrs)	Dayton, OH	06/25/08	06/20/08
63599	ExamOne, Quest Diagnostics (Wkrs)	Lenexa, KS	06/25/08	06/23/08
63600	Colson Monette (State)	Monette, AR	06/25/08	06/18/08
63601	General Ribbon Corp. (Comp)	Chatsworth, CA	06/25/08	06/02/08
63602	Talport Industries, LLC (Comp)	Hattiesburg, MS	06/25/08	06/24/08
63603	Western Mattress (Wkrs)	San Angelo, TX	06/26/08	06/16/08
63604	Destron Fearing (State)	South St. Paul, MN	06/26/08	06/23/08
63605	CPUZ, LLC (Comp)	Arden, NC	06/26/08	06/25/08
63606	Lakeland Mold Company, LLC (Comp)	Stow, OH	06/27/08	06/26/08
63607	Tecnicor International, Inc. (State)	Hingham, MA	06/27/08	06/17/08
63608	Lennox Manufacturing (State)	Marshall Town, IA	06/27/08	06/26/08
63609	C.A. Garner Veneer, Inc. (Comp)	Smithfield, KY	06/27/08	06/10/08
63610	RF Micro Devices (RFMD) (Rep)	Greensboro, NC	06/27/08	06/24/08
63611	Ametek Aerospace and Power Instruments (IUECWA)	Wilmington, MA	06/27/08	06/24/08
63612	American Axle and Manufacturing—Cheektowaga Facility (UAW).	Cheektowaga, NY	06/27/08	06/26/08
63613	Swaim Incorporated (Wkrs)	High Point, NC	06/27/08	06/09/08
63614	Benmatt Industries (State)	Federalsburg, MD	06/27/08	06/26/08
63615	Acuity Brands, Holophane (IBEW)	Newark, OH	06/27/08	06/26/08

[FR Doc. E8–15856 Filed 7–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,095]

Western Union Financial Services, Inc. Bridgeton, MO; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 15, 2008, the petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 10, 2008 and published in the **Federal Register** on April 23, 2008 (73 FR 21992).

The request for reconsideration also includes workers of Western Union Financial Services, Inc., St. Charles, Missouri. The initial petition and consequent determination did not include workers of the above mentioned location. If the petitioner wishes the Department to consider TAA eligibility for workers of Western Union Financial Services, Inc. in St. Charles, Missouri, a new petition applicable to these workers should be filed.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The negative TAA determination issued by the Department for workers of Western Union Financial Services, Inc., Bridgeton, Missouri was based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974. The investigation revealed that workers of the subject firm are engaged in call center services. The investigation further revealed that no production of article(s) occurred within the firm or appropriate subdivision within the Western Union Financial Services, Inc. during the relevant time period.

The petitioner in the request for reconsideration contends that the Department erred in its interpretation of the work performed by the workers of the subject firm. The petitioner states that the workers of the subject firm ''are customer service representatives picking up telephone calls from customers wishing to send money orders to recipients either in the United States or overseas''. The petitioner also states that ''the article produced domestically in this case is the money order'' generated

after obtaining various financial information about customer's credit history. The petitioner alleges that the money order, ''consisting of tangible cash at the receiving end of the order'' is a product just as ''an article or piece of clothing'', therefore, workers of the subject firm should be considered as engaged in production of articles.

The investigation revealed that Western Union is a global leader in money transfer services, offering the ability to send money to various locations, including numerous foreign countries and territories. No articles are produced within Western Union. The workers of Western Union Financial Services, Inc., Bridgeton, Missouri provide customer service support to Western Union customers and agents. These functions, as described above, are not considered production of an article within the meaning of Section 222 of the Trade Act and while the provision of services may result in printed material, it is incidental to the provision of these services. Money order is a document used by the subject firm as incidental to money transfer services provided by the subject firm. No production took place at the subject facility nor did the workers support production of an article at any domestic affiliated location during the relevant period.

The petitioner also alleges that job functions have been shifted from the subject firm overseas.

The allegation of a shift to another country might be relevant if it was determined that workers of the subject firm produced an article. However, the investigation determined that workers of Western Union Financial Services, Inc., Bridgeton, Missouri do not produce an article within the meaning of Section 222 of the Trade Act of 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 25th day of June, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15864 Filed 7–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[SGA/DFA–PY 08–04]

Solicitation for Grant Applications (SGA); Technology-Based Learning (TBL) Initiative

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice: Amendment to SGA/DFA–PY 08–04.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** on June 20, 2008, announcing the availability of funds and solicitation for grant applications (SGA) under the TBL Initiative to be awarded through a competitive process. This notice is a second amendment to the SGA and it amends ''Part V. Applications Review Process,'' under the specific heading ''Strength of Partnerships.''

FOR FURTHER INFORMATION CONTACT: James Stockton, Grant Officer, Division of Federal Assistance, at (202) 693–3335.

Supplementary Information Correction: In the **Federal Register** of June 20, 2008, in FR Doc. E8–13967. On page 35161 under the first (1st) paragraph, under the specific heading ''Strength of Partnerships'' (8 points) delete the last sentence, ''The applicant must designate one organization from the workforce investment or education system from among the application's partners to act as grant recipient.''

DATES: *Effective Date:* This notice is effective July 14, 2008.

Signed at Washington, DC this 8th day of July, 2008.

James W. Stockton,

Grant Officer.

[FR Doc. E8–15935 Filed 7–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,306]

Art Guild of Philadelphia, Inc., Eastern Display Division, Providence, RI; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 5, 2008 in response to a petition filed by a company official on behalf of workers of Art Guild of Philadelphia, Inc., Eastern Display Division, Providence, Rhode Island.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 30th day of June, 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15866 Filed 7–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,596]

Medtronic Vascular, Danvers, MA Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 24, 2008 in response to a worker petition filed by a state agency representative on behalf of workers of Medtronic Vascular, Danvers, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 30th day of June 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15868 Filed 7–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,581]

Varian Semiconductor Equipment, Gloucester, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 23, 2008 in response to a worker petition filed by a company official on behalf of workers at Varian Semiconductor Equipment, Gloucester, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 30th day of June 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15867 Filed 7–11–08; 8:45 am]

BILLING CODE 4510–FN–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2008–6]

Notice of Intent to Audit

AGENCY: Copyright Office, Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Office of the Library of Congress is announcing receipt of six notices of intent to audit various eligible nonsubscription and new subscription services that transmit sound recordings under statutory licenses. The audits intend to verify statements of account for the year 2005.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, General Counsel, P.O. Box 70400, Washington, DC 20024–0977. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Section 106(6) of the Copyright Act, title 17 of the United States Code, gives the copyright owner of a sound recording the right to perform a sound recording publicly by means of a digital audio transmission, subject to certain limitations. Among these limitations are certain exemptions and a statutory license which allows for the public performance of sound recordings as part of ''eligible nonsubscription transmissions'' and digital transmissions made by ''new subscription services.'' [1] 17 U.S.C. 114. Moreover, these services may make any necessary ephemeral reproductions to facilitate the digital transmission of a sound recording under a second license set forth in section 112(e) of the Copyright Act. Use of these licenses requires that services make payments of royalty fees to and file reports of sound recording performances with SoundExchange. SoundExchange is a collecting rights entity that was designated by the Librarian of Congress to collect statements of account and royalty fee payments from services and distribute the royalty fees to copyright owners and performers entitled to receive such royalties under sections 112(e) and 114(g) following a proceeding before a Copyright Arbitration Royalty Panel (''CARP'') that set rates for the year 2005. 69 FR 5693 (Feb. 6, 2004). CARP was the entity responsible for setting rates and terms for use of the section 112 and section 114 licenses prior to the passage of the Copyright Royalty and Distribution Reform Act of 2004 (''CRDRA'').

The CRDRA, which became effective on May 31, 2005, amends the Copyright Act, title 17 of the United States Code, by phasing out the CARP system and replacing it with three permanent Copyright Royalty Judges (''CRJs''). Consequently, the CRJs are now responsible for carrying out the functions heretofore performed by the CARPs, including the adjustment of rates and terms for certain statutory licenses such as the section 114 and 112 licenses. However, verification of statements of account for 2005 are still governed by § 262.6 of title 37 of the Code of Federal Regulations, which states that SoundExchange, as the Designated Agent, may conduct a single audit of a Licensee for the purpose of verifying their royalty payments. As a preliminary matter, the Designated Agent is required to submit a notice of its intent to audit a Licensee with the Copyright Office and serve this notice on the service to be audited. 37 CFR 262.6(c).

On June 27, 2008, the Copyright Office received six notices of intent to audit, which were submitted by SoundExchange. The notices announced an intent to audit the following eligible new subscription services for the year 2005: Yahoo!, Inc.; Real Networks, Inc.; and Last.fm, Ltd. The notices also announced an intent to audit the following eligible nonsubscription transmission services for the year 2005: Yahoo!, Inc.; Real Networks, Inc.; AOL LLC; MTV Networks; Susquehanna Radio Corp.; and Last.fm, Ltd.[2]

Section 262.6(c) requires the Copyright Office to publish a notice in the Federal Register within thirty days of receipt of the filing announcing the Designated Agent's intent to conduct an audit. In accordance with this regulation, the Office is publishing today's notice to fulfill this requirement with respect to the notices of intent to audit as received from SoundExchange on June 27, 2008.

Dated: July 8, 2008

Tanya M. Sandros,

General Counsel.

[FR Doc. E8–15952 Filed 7–11–08; 8:45 am]

BILLING CODE 1410–30–S

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of a remote field support and emergency provisions for the *M/V Discovery.* for the 2008–2009 austral summer season. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application within August 13, 2008. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale, Environmental Officer at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR Part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutants in Antarctica, and for the release of wastes in Antarctica. NSF has received a permit application under this Regulation for Voyages of Discovery's vessel, *Discovery* for operation of remote field support and emergency provisions for passenger

[1] An ''eligible nonsubscription transmission'' is a noninteractive digital audio transmission which, as the name implies, does not require a subscription for receiving the transmission. The transmission must also be made as a part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the primary purpose of which is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services. *See* 17 U.S.C. 114(j)(6).

A ''new subscription service'' is ''a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription or a preexisting satellite digital audio radio service.'' 17 U.S.C. 114(j)(8).

[2] A copy of the Notices of Intent to Audit is posted on the Copyright Office Web site at http://www.copyright.gov/carp/AuditNotices2005.pdf SoundExchange also stated in the notice its intent to audit Last.fm Ltd. for the calendar years 2006 and 2007. Verification of statements of account for 2006 and 2007 are governed by 37 CFR 380.6 of the CRJs' regulations. See 73 FR 15778 (Mar. 25, 2008).

landings in Antarctica. On each landing of passengers, emergency gear is taken ashore in case the weather deteriorates and passengers are required to stay ashore for an extended period. Emergency provisions include: food rations, orange smoke signals, a parachute rocket, cyalume light sticks, water bottles, flashlights, thermal protective aids (TPA) and paper towels. All waste products (paper, food, human wastes, and expended smoke signals and parachute rockets) will be removed from Antarctica and properly disposed in an appropriate port of disembarkation. In the event of an accidental spill from a cyalume light stick, all contaminated snow and or soil will be removed. in accordance with Antarctic waste regulations.

Application for the permit is made by: Mark Flager, Vice President, Voyages of Discovery, 1800 SE 10th Avenue, Suite 205, Ft Lauderdale, FL 33316.

Location: Antarctic Peninsula.

Dates: December 6, 2008 to February 10, 2009.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E8–15854 Filed 7–11–08; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 13, 2008. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant:* Douglas P. Nowacek, Duke University, Marine Laboratory, 135 Duke Marine Lab Rd., Beaufort, NC 28516.

Permit Application No.: 2009–014.

Activity for Which Permit Is Requested: Take. The applicant plans to approach up to 50 Humpback and Minke whales each per season to conduct visual observations, photograph and attach non-invasive DTags to record fine-scale movement patterns and foraging behavior of the whales. An active release, which corrodes in sea water, can be timed to release the tag once data storage is complete. The tags will be recovered and returned to the ship. In addition, photography and observations of the whales will help to identify individual whales and determine approximate ages.

Location: Near-shore waters of the Western Antarctic Peninsula between Anvers Island and Adelaide Islands.

Dates: February 1, 2009 to June 30, 2010.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E8–15933 Filed 7–11–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on March 3, 2008.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* NRC Form 445, Request for Approval of Official Foreign Travel.

3. *Current OMB approval number:* 3150–0193.

4. *The form number if applicable:* Form 445.

5. *How often the collection is required:* On occasion.

6. *Who will be required or asked to report:* Non-Federal consultants, contractors and invited travelers.

7. *An estimate of the number of annual responses:* 120.

8. *The estimated number of annual respondents:* 120.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 120

10. *Abstract:* Form 445, ''Request for Approval of Foreign Travel,'' is supplied by consultants, contractors, and NRC invited travelers who must travel to foreign countries in the course of conducting business for the NRC. In accordance with 48 CFR 20, ''NRC Acquisition Regulation,'' contractors traveling to foreign countries are required to complete this form. The information requested includes the name of the Office Director/Regional Administrator or Chairman, as appropriate, the traveler's identifying information, purpose of travel, listing of the trip coordinators, other NRC travelers and contractors attending the same meeting, and a proposed itinerary.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 13, 2008. Comments received after this date will be considered if it is practical to do so, but

assurance of consideration cannot be given to comments received after this date.

Nathan J. Frey, Office of Information and Regulatory Affairs (3150–0193), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Nathan_J._Frey@omb.eop.gov* or submitted by telephone at (202) 395–7345.

The NRC Clearance Officer is Margaret A. Janney, (301) 415–7245.

Dated at Rockville, Maryland, this 8th day of July, 2008.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–15926 Filed 7–11–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–018–COL, 52–019–COL; ASLBP No. 08–865–03–COL–BD01]

Duke Energy Carolinas, LLC; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding;

Duke Energy Carolinas, LLC

(William States Lee III Nuclear Station, Units 1 and 2)

This proceeding concerns a Petition to Intervene and Request for Hearing submitted by the Blue Ridge Environmental Defense League, and a request to participate in any hearing by the South Carolina Office of Regulatory Staff, which were submitted in response to an April 28, 2008 Notice of Hearing and Opportunity To Petition for Leave To Intervene on a Combined License for William States Lee III Units 1 and 2 (73 FR 22,978). The Petition to Intervene and Request for Hearing challenges the application filed by Duke Energy Carolinas, LLC, pursuant to Subpart C of 10 CFR Part 52 for a combined license for William States Lee III Nuclear Station, Units 1 and 2, which would be located in Cherokee County, South Carolina.

The Board is comprised of the following administrative judges:

Paul S. Ryerson, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Nicholas G. Trikouros, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Dr. William H. Murphy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 8th day of July 2008.

Anthony J. Baratta,

Associate Chief Administrative Judge—Technical, Atomic Safety and Licensing Board Panel.

[FR Doc. E8–16008 Filed 7–11–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–424 and 50–425]

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, GA, Vogtle Electric Generating Plant, Units 1 and 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–68 and NPF–81 issued to the Southern Nuclear Operating Company, Inc. (the licensee), acting for itself, Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the owners), for operation of the Vogtle Electric Generating Plant (VEGP), Units 1 and 2 (VEGP Units 1 and 2) located in Wayne County, Georgia.

This amendment application proposes a one-time steam generator (SG) tubing eddy current inspection interval revision to the VEGP Units 1 and 2, Technical Specifications (TSs) 5.5.9, ''Steam Generator (SG) Program,'' to incorporate an interim alternate repair criterion in the provisions for SG tube repair criteria during the Unit 2 inspection performed in Refueling Outage 13 and subsequent operating cycle. This amendment application requests approval of an interim alternate repair criterion (IARC) that requires full-length inspection of the tubes within the tubesheet but does not require plugging tubes if any axial or circumferential cracking observed in the region greater than 17 inches below the top of the tubesheet (TTS) is less than a value sufficient to permit the remaining circumferential ligament to transmit the limiting axial loads. This amendment application is required to preclude unnecessary plugging while still maintaining structural and leakage integrity.

This amendment application includes SUNSI (proprietary information). Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Of the various accidents previously evaluated, the proposed changes only affect the steam generator tube rupture (SGTR) event evaluation and the postulated steam line break (SLB), locked rotor and control rod ejection accident evaluations. Loss-of-coolant accident (LOCA) conditions cause a compressive axial load to act on the tube. Therefore, since the LOCA tends to force the tube into the tubesheet rather than pull it out, it is not a factor in this licensing amendment request. Another faulted load consideration is a safe shutdown earthquake (SSE); however, the seismic analysis of Model F steam generators has shown that axial loading of the tubes is negligible during an SSE.

At normal operating pressures, leakage from primary water stress corrosion cracking (PWSCC) below 17 inches from the top of the tubesheet is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region.

For the SGTR event, the required structural margins of the steam generator tubes is maintained by limiting the maximum allowable through-wall circumferential crack size to remain in service to 203 degrees below 17 inches from the top of the tubesheet and for the lower-most 1 inch limiting the maximum allowable through-wall circumferential crack size to 94 degrees, for the duration of the 18-month SG tubing eddy current inspection interval. Tube rupture is precluded for cracks in the hydraulic expansion region due to the constraint provided by the tubesheet. The potential for tube pullout is mitigated by limiting the maximum allowable through-wall circumferential crack size to remain in service to 203 degrees below 17 inches from the top of the tubesheet and for the lower-most 1 inch limiting the maximum allowable through-wall circumferential crack size 94 degrees, for the duration of the 18-month SG tubing eddy current inspection interval. These allowable crack sizes take into account eddy current uncertainty and crack growth rate. It has been shown that a circumferential crack with an azimuthal extent of 203 degrees, and to 94 degrees for the bottom 1 inch, for the 18-month SG tubing eddy current inspection interval meets the performance criteria of NEI 97–06, Rev. 2, ''Steam Generator Program Guidelines'' and the August 1976 draft Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes.'' (Reference 14). Therefore, the margin against tube burst/pullout is maintained during normal and postulated accident conditions and the proposed change does not result in a significant increase in the probability or consequence of a SGTR.

The probability of a SLB is unaffected by the potential failure of a SG tube as the failure of a tube is not an initiator for a SLB event. SLB leakage is limited by leakage flow restrictions resulting from the leakage path above potential cracks through the tube-to-tubesheet crevice. The leak rate during postulated accident conditions (including locked rotor and control rod ejection) has been shown to remain within the accident analysis assumptions for all axial or circumferentially oriented cracks occurring 17 inches below the top of the tubesheet. Since normal operating leakage is limited to 150 gpd (approximately 0.10 gpm), the attendant accident condition leak rate, assuming all leakage to be from indications below 17 inches from the top of the tubesheet, would be bounded by 0.35 gpm. This value is within the accident analysis assumptions for the limiting design basis accident for VEGP, which is the postulated SLB event.

Based on the above, the performance criteria of NEI–97–06, Rev. 2 and draft [Regulatory Guide] RG 1.121 continue to be met and the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

The proposed change does not introduce any changes or mechanisms that create the possibility of a new or different kind of accident. Tube bundle integrity is expected to be maintained for all plant conditions upon implementation of the interim alternate repair criterion. The proposed change does not introduce any new equipment or any change to existing equipment. No new effects on existing equipment are created nor are any new malfunctions introduced.

Therefore, based on the above evaluation, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change maintains the required structural margins of the steam generator tubes for both normal and accident conditions. NEI 97–06, Rev. 2 and draft RG 1.121 are used as the basis in the development of the limited tubesheet inspection depth methodology for determining that steam generator tube integrity considerations are maintained within acceptable limits. Draft RG 1.121 describes a method acceptable to the NRC staff for meeting General Design Criteria 14, 15, 31, and 32 by reducing the probability and consequences of a SGTR. Draft RG 1.121 concludes that by determining the limiting safe conditions of tube wall degradation beyond which tubes with unacceptable cracking, as established by inservice inspection, should be removed from service or repaired, the probability and consequences of a SGTR are reduced. This draft RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the ASME Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking in a tube or the tube-to-tubesheet weld, Reference 3 defines a length of remaining tube ligament that provides the necessary resistance to tube pullout due to the pressure induced forces (with applicable safety factors applied). Additionally, it is shown that application of the limited tubesheet inspection depth criteria will not result in unacceptable primary-to-secondary leakage during all plant conditions.

Based on the above, it is concluded that the proposed changes do not result in any reduction of margin with respect to plant safety as defined in the Updated Safety Analysis Report or bases of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person(s) whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the

Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/ requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer ™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m., Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737. Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m., Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated April 14, 2008, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not

have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, GA, Vogtle Electric Generating Plant, Units 1 and 2, Docket Nos. 50–424 and 50–425

1. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including SUNSI and SGI).

2. Within ten (10) days after publication of this notice of opportunity for hearing, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI. A ''potential party'' is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *HearingDocket@nrc.gov* and *OGCmail@nrc.gov*, respectively.[1] The request must include the following information:

a. A description of the licensing action with a citation to this **Federal Register** notice of opportunity for hearing;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the licensing action identified in (a) if the licensing action is not sustained;

c. If the request is for SUNSI, the identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

d. If the request is for SGI, the identity of the individual requesting access to SGI and the identity of any expert, consultant or assistant who will aid the requester in evaluating the SGI, and information that shows:

(i) Why the information is indispensable to meaningful participation in this licensing proceeding; and

(ii) The technical competence (demonstrable knowledge, skill, experience, training or education) of the requester to understand and use (or evaluate) the requested information to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant or assistant who demonstrates technical competence as well as trustworthiness and reliability, and who agrees to sign a non-disclosure affidavit and be bound by the terms of a protective order; and

e. If the request is for SGI, Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' Form FD–258 (fingerprint card), and a credit check release form completed by the individual who seeks access to SGI and each individual who will aid the requester in evaluating the SGI. For security reasons, Form SF–85 can only be submitted electronically, through a restricted-access database. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301–415–0320.[2] The other completed forms must be signed in original ink, accompanied by a check or money order payable in the amount of $191 to the U.S. Nuclear Regulatory Commission for each individual, and mailed to the: Office of Administration, Security Processing Unit, Mail Stop T–6E46, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0012.

These forms will be used to initiate the background check, which includes fingerprinting as part of a criminal history records check. Note: Copies of these forms do *not* need to be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as described above.

4. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. Incomplete packages will be returned to the sender and will not be processed.

5. Based on an evaluation of the information submitted under items 2 and 3.a through 3.d, above, the NRC staff will determine within ten days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI or need to know the SGI requested. For SGI, the need to know determination is made based on whether the information requested is necessary (*i.e.*, indispensable) for the proposed recipient to proffer and litigate a specific contention in this NRC proceeding[3] and whether the proposed recipient has the technical competence (demonstrable knowledge, skill, training, education, or experience) to evaluate and use the specific SGI requested in this proceeding.

6. If standing and need to know SGI are shown, the NRC staff will further determine based upon completion of the background check whether the proposed recipient is trustworthy and reliable. The NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection systems are sufficient to protect SGI from inadvertent release or disclosure. Recipients may opt to view SGI at the NRC's facility rather than establish their own SGI protection program to meet SGI protection requirements.

7. A request for access to SUNSI or SGI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI or a need to know for SGI, and that the proposed recipient of SGI is trustworthy and reliable;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI and/or SGI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.[4] Any protective order issued shall provide that the petitioner must file SUNSI or SGI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

8. If the request for access to SUNSI or SGI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,[5] and the

[1] See footnote 6. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

[2] The requester will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

[3] Broad SGI requests under these procedures are thus highly unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention.

[4] If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

[5] Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate

Continued

petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within five (5) days, describing the obstacles to the agreement.

9. If the request for access to SUNSI is denied by the NRC staff or a request for access to SGI is denied by NRC staff either after a determination on standing and need to know or, later, after a determination on trustworthiness and reliability, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within five (5) days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer. In the same manner, an SGI requester may challenge an adverse determination on trustworthiness and reliability by filing a challenge within fifteen (15) days of receipt of that determination.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within five (5) days of the notification by the NRC staff of its grant of such a request. If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[6]

10. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI and/or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those intervenors/petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

Dated at Rockville, Maryland, this 8th day of July 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1.—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) AND SAFEGUARDS INFORMATION (SGI) IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of proposed action and opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI and/or SGI with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
[20, 30 or 60]	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	NRC staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI, or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no ''need,'' ''need to know,'' or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.

in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (*e.g.*, as with proprietary information).

[6] As of October 15, 2007, the NRC's final ''E-Filing Rule'' became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; Aug. 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI requests submitted to the NRC staff under these procedures.

ATTACHMENT 1.—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) AND SAFEGUARDS INFORMATION (SGI) IN THIS PROCEEDING—Continued

Day	Event/activity
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
B	Decision on contention admission.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.

[FR Doc. E8–16042 Filed 7–11–08; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 17f–2(c); SEC File No. 270–35; OMB Control No. 3235–0029.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 17f–2(c) (17 CFR 240.17f–2(c)).

Rule 17f–2(c) allows persons required to be fingerprinted pursuant to Section 17(f)(2) of the Securities Exchange Act of 1934 to submit their fingerprints through a registered securities exchange or a national securities association in accordance with a plan submitted to and approved by the Commission. The Commission has approved such plans for several exchanges and for the Financial Industry Regulatory Authority, Inc. (''FINRA'').

It is estimated that 5,984 respondents submit approximately 368,000 fingerprint cards to exchanges or a national securities association on an annual basis. The Commission estimates that it would take approximately 15 minutes to create and submit each fingerprint card. The total reporting burden is therefore estimated to be 92,000 hours, or approximately 15 hours per respondent, annually. In addition, the exchanges and FINRA charge an estimated $30 fee for processing fingerprint cards, resulting in a total annual cost to all 5,984 respondents of $11,040,000, or $1,845 per respondent per year.

Because the Federal Bureau of Investigation will not accept fingerprint cards directly from submitting organizations, Commission approval of plans from certain exchanges and national securities associations is essential to the Congressional goal of fingerprint personnel in the security industry. The filing of these plans for review assures users and their personnel that fingerprint cards will be handled responsibly and with due care for confidentiality.

Written 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia, 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: July 7, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15904 Filed 7–11–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Extension of Existing Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 17a–19; OMB Control No. 3235–0133; SEC File No. 270–148; Form X–17A–19.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in the following rule: Rule 17a–19 (17 CFR 240.17a–19) and Form X–17A–19 (17 CFR 249.635) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–19 requires every national securities exchange and registered national securities association to file a Form X–17A–19 with the Commission within 5 business days of the initiation, suspension, or termination of any member and, when terminating the membership interest of any member, to notify that member of its obligation to file financial reports as required by Exchange Act Rule 17a–5(b) (17 CFR 240.17a–5).

The Commission uses the information contained in Form X–17A–19 to assign the appropriate self-regulatory organization to be the designated examining authority for the member firm. This information is also used by the Securities Investor Protection Corporation (''SIPC'') in determining which self-regulatory body is the collection agent for the SIPC fund.

The information requested by Form X–17A–19 is obtained from the respondent's membership files. The Commission staff estimates that, in its experience, Form X–17A–19 can be completed and signed within 15 minutes. The number of responses per year per respondent varies, depending on the number of membership changes reported. The number of filings is approximately 600 per year. The aggregate time spent by all respondents per year in complying with the rule is therefore approximately 150 hours (600 responses times 1/4 hour equals 150 hours).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: July 7, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15905 Filed 7–11–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58110; File No. SR–BSE–2008–34]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Permit the Listing and Trading of Options on Foreign Currency ETFs and Commodity Pool ETFs

July 7, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2008, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain rules of the Boston Options Exchange (''BOX'') to permit the listing and trading of options on: (1) Shares of exchange-traded funds (''ETFs'') that hold specified non-U.S. currency options, futures, or options on futures on such currency, or any other derivatives based on such currency (referred collectively herein as ''Foreign Currency ETFs''); and (2) trust-issued receipts (''TIRs''), partnership units, and securities issued by other entities that hold or invest in commodity futures products (referred collectively herein as ''Commodity Pool ETFs'').

The text of the proposed rule change is available at the principal office of the Exchange, the Commission's Public Reference Room, and *http://www.bostonstock.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. BSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to enable the listing and trading on BOX of options on Foreign Currency ETFs and Commodity Pool ETFs. Currently, section 3(i) of Chapter IV of the BOX Rules provides that securities deemed appropriate for options trading shall include shares or other securities (''Exchange-Traded Fund Shares'') that are traded on a national securities exchange and represent interests in registered investment companies, unit investment trusts, or similar entities that hold portfolios of securities and/or financial instruments, including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements, and reverse repurchase agreements (''Financial Instruments''), and money market instruments, including but not limited to U.S. government securities and repurchase agreements (the ''Money Market Instruments''), comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments).

The Exchange proposes to amend section 3(i) of Chapter IV of the BOX Rules to expand the types of options listed and traded on BOX to include options on:

- Trusts that hold a specified non-U.S. currency or currencies deposited which when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust; and
- Shares issued by an entity holding commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, and/or options on physical commodities and/or non-U.S. currency.

In particular, the proposed amendment to section 3(i) of Chapter IV would permit the Exchange to list options on the CurrencyShares Euro Trust (''Trust'')[5] which issues Euro CurrencyShares (''Shares'')[6] and other similarly structured currency-based products.

The investment objective of Foreign Currency ETFs is for the shares of a particular fund to reflect the price of the particular foreign currency held therein. They are intended to provide institutional and retail investors with a simple, cost-effective means of gaining investment benefits similar to those of holding the particular foreign currency whose value is reflected.

Additionally, the proposed amendment to section 3(i) of Chapter IV would permit the Exchange to list options on Commodity Pool ETFs. Commodity Pool ETFs may hold or trade in one or more types of investments that may include any combination of securities, commodity futures contracts, options on commodity futures contracts, swaps, and forward contracts. Proposed section 3(i) of Chapter IV of the BOX Rules sets forth that for BOX to list an option on a Commodity Pool ETF, the Commodity Pool ETF must be traded on a national securities exchange and defined as an ''NMS stock'' under Rule 600 of Regulation NMS.

The Exchange believes that permitting options on Foreign Currency ETFs and Commodity Pool ETFs to be traded on BOX is consistent with the Commission's approvals of rule changes filed by the International Securities Exchange (''ISE'') and NYSE Arca to list and trade shares of the Trust and similarly structured currency-based products.[7] This rule change to BOX's listing criteria for ETFs is intended to provide appropriate listing standards and is necessary to enable the Exchange to list and trade options shares of Foreign Currency ETFs and Commodity Pool ETFs that are now listed or may be listed in the future.[8] The Exchange believes that it is reasonable to expect other types of Foreign Currency ETFs and Commodity Pool ETFs to be introduced for trading in the near future. The proposed amendment to the Exchange's listing criteria for options on Foreign Currency ETFs and Commodity Pool ETFs are necessary to ensure that the Exchange will be able to list options on existing Foreign Currency ETFs and Commodity Pool ETFs as well as any other similar ETFs that may be listed and traded in the future.

ETFs on which BOX-listed options are based have to satisfy the listing standards in section 3(i) of Chapter IV of the BOX Rules. Specifically, the Exchange-Traded Fund Shares must be traded on a national securities exchange or through the facilities of a national securities association and must be an ''NMS stock'' as defined under Rule 600 of Regulation NMS. The ETF must also either: (1) Meet the criteria and guidelines under sections 3(a) and 3(b) of Chapter IV (Criteria for Underlying Securities); or (2) be available for creation or redemption each business day from and through the issuer in cash or in-kind at a price related to net asset value. In addition, the trust, commodity pool, or other similar entity shall provide that shares may be created even if some or all of the investment assets and/or cash required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver the shares as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer.

Under the applicable continued listing criteria in section 4(h) of Chapter IV of the BOX Rules, ETF options approved for trading would not be deemed to meet the requirements for continued approval, and Boston Options Exchange Regulation (''BOXR'') would not open for trading any additional series of options contracts of the class covering such ETF in any of the following circumstances:

- The ETF is halted from trading on its primary market;
- The ETF is delisted in accordance with the terms of Section 4(b)(vi) of Chapter IV of the BOX Rules;
- Following the initial 12-month period beginning upon the commencement of trading of the ETF, there are fewer than 50 record and/or beneficial holders of such ETF for 30 or more consecutive trading days;
- The value of the index or portfolio of securities or non-U.S. currency, portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or Financial Instruments and Money Market Instruments on which the ETF is based is no longer calculated or available; or
- Such other event occurs or condition exists that in the opinion of BOXR makes further dealing of the options on BOX inadvisable.

As part of this revision, the Exchange proposes to add paragraphs (i)(B)(iv) and (i)(B)(v) to section 3 of Chapter IV of the BOX Rules to require that, for Foreign Currency ETFs and Commodity Pool ETFs, a comprehensive surveillance sharing agreement be in place with the marketplace(s) with last-sale reporting that represent the highest volume in the underlying derivatives. Such derivatives consist of options or futures on the specified non-U.S. currency, commodity futures contracts, and/or options on commodity futures contracts on the specified commodities or non-U.S. currency, which are utilized by the national securities exchange where the underlying Foreign Currency ETFs and Commodity Pool ETFs are listed and traded.

The Exchange represents that it has an adequate surveillance program in place for options based on Foreign Currency ETFs and Commodity Pool ETFs, and intends to apply those same program procedures that it applies to ETF options currently traded on BOX. In addition, BOX may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG.[9] The Exchange represents that prior to listing and trading options on Foreign Currency ETFs and Commodity Pool ETFs, it will have the ability to obtain specific trading

[5] Rydex Specialized Products LLC, d/b/a ''Rydex Investments,'' is the sponsor of the Trust (''Sponsor'') and may be deemed the ''issuer'' of the Shares pursuant to Section 2(a)(4) of the Securities Act of 1933. The Bank of New York is the trustee of the Trust (''Trustee''); JPMorgan Chase Bank, N.A., London Branch, is the depository for the Trust (''Depository''); and Rydex Distributors, Inc. is the distributor for the Trust (''Distributor''). The Trust intends to issue additional Shares on a continuous basis through the Trustee.

[6] The Shares are listed and trade on NYSE Arca under the symbol ''FXE.'' The Shares may also trade in other markets.

[7] *See* Securities Exchange Act Release Nos. 54087 (June 30, 2006), 71 FR 38918 (July 10, 2006) (SR–ISE–2005–60) (approving the listing and trading of options on ETFs that hold specified non-U.S. currency); 54730 (November 9, 2006), 71 FR 66999 (November 17, 2006) (SR–NYSEArca–2006–04) (approving the listing and trading of options on ETFs that hold specified non-U.S. currency); 55635 (April 16, 2007), 72 FR 19999 (April 20, 2007) (SR–ISE–2007–16) (approving the listing and trading of options on Commodity Pool ETFs); and 56073 (July 13, 2007) 72 FR 39654 (July 19, 2007) (SR–NYSEArca–2007–53) (approving the listing and trading of options on Commodity Pool ETFs).

[8] *See, e.g.*, Securities Exchange Act Release Nos. 53105 (January 11, 2006), 71 FR 3129 (SR–Amex–2005–59) (January 19, 2006) (approving the listing and trading of the DB Commodity Index Tracking Fund); 53582 (March 31, 2006), 71 FR 17510 (SR–Amex–2005–127) (April 6, 2006) (approving the listing and trading of Units of the United States Oil Fund, L.P.); and 54450 (September 14, 2006), 71 FR 51245 (September 21, 2006) (SR–Amex–2006–44) (approving the listing and trading of the PowerShares DB G10 Currency Harvest Fund).

[9] For a list of current members and affiliate members of the ISG, *see http://www.isgportal.com.*

information either via ISG or from the exchange or exchanges where the particular underlying non-U.S. currency futures and/or options and commodity futures and/or options on commodity futures are traded.[10]

The Exchange is also proposing to amend section 4(a) of Chapter III of the BOX Rules to require each Options Participant to establish, maintain, and enforce written policies and procedures to prevent the misuse of material nonpublic information it might have or receive regarding applicable non-U.S. currency; non-U.S. currency options, futures, or options on futures on such currency; or any other derivatives on such currency, option, or derivative, or regarding the applicable related commodity, commodity futures, options on commodity futures, or any other related commodity derivatives.

The Exchange is further proposing to amend section 7 of Chapter VI and Section 1 of Chapter VIII of the BOX Rules to ensure that market makers handling options on ETFs provide BOXR with all necessary information relating to their trading in the applicable non-U.S. currency; non-U.S. currency options, futures, or options on futures on such currency; any other derivatives based on such currency; physical commodities; physical commodity options; and commodity futures contracts, options on commodity futures contracts, or any other derivatives based on such commodity, and that all such trading occurs in an account which has been reported to BOXR.

Finally, the Exchange represents that the addition of options on Foreign Currency ETFs and Commodity Pool ETFs would not have any effect on the rules pertaining to position and exercise limits[11] or margin.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[13] in general, and furthers the objectives of section 6(b)(5) of the Act,[14] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that amending the BOX rules to accommodate the listing and trading of options on Foreign Currency ETFs and Commodity Pool ETFs would provide investors with greater risk management tools and, in general, would allow for the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change as operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change is substantially similar to those of other options exchanges that have been previously approved by the Commission[17] and does not appear to present any novel regulatory issues. Therefore, the Commission designates the proposal operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BSE–2008–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-BSE–2008–34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3p.m. Copies of such filing also will be available for inspection and copying at

[10] E-mail from Maura Looney, Associate Vice President Regulation and Enforcement, Exchange, to Michou H.M. Nguyen, Special Counsel, Division of Trading and Markets, Commission, on July 7, 2008 (correcting drafting error in purpose section of Form 19b–4).

[11] *See* Section 7 and Section 9 of Chapter III of the BOX Rules.

[12] *See* Section 3 of Chapter XIII of the BOX Rules.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). The Exchange has satisfied the five-day pre-filing requirement of Rule 19b–4(f)(6)(iii).

[17] *See* Securities Exchange Act Release Nos. 54087 (June 30, 2006), 71 FR 38918 (July 10, 2006) (SR–ISE–2005–60) and 54983 (December 20, 2006), 71 FR 78476 (December 29, 2006)(SR–Amex–2006–87) (approving the listing and trading of options on Foreign Currency ETFs); Securities Exchange Act Release Nos. 55547 (March 28, 2007) 72 FR 16388 (April 4, 2007) (SR–AMEX–2006–110) and 55635 (April 16, 2007) 72 FR 19999 (April 20, 2007) (SR–ISE–2007–16) (approving the listing and trading of options on Commodity Pool ETFs).

[18] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2008–34 and should be submitted on or before August 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15886 Filed 7–11–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58103; File No. SR–FINRA–2008–036]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to the Incorporated NYSE Rules

July 3, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 3, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared substantially by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA proposes to amend certain rules of the New York Stock Exchange LLC (''NYSE'') to reduce regulatory duplication and relieve firms that are members of both FINRA and the NYSE (''Dual Members'') of conflicting or unnecessary regulatory burdens in the interim period before a consolidated FINRA rulebook is completed.[3] The text of the proposed rule change is available at *http://www.finra.org*, the principal offices of FINRA, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulation, enforcement and arbitration operations of NYSE. As part of the consolidation, FINRA incorporated into its rulebook certain NYSE rules related to member firm conduct (''Incorporated NYSE Rules''). As a result, the current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) Incorporated NYSE Rules (together referred to herein as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to Dual Members. FINRA is developing a new consolidated rulebook (''Consolidated FINRA Rulebook''), which, upon completion, will consist only of FINRA Rules.

In the interim period before the Consolidated FINRA Rulebook is completed, FINRA is proposing amendments to certain Incorporated NYSE Rules to reduce regulatory disparities and to relieve Dual Members of conflicting or unnecessary regulatory burdens. The proposed rule change includes those rule changes proposed in the NYSE's Omnibus filing that would reach an interim solution to an unnecessary regulatory burden or to an inconsistent standard between the Incorporated NYSE Rules and NASD Rules.[4] Additionally, this proposal would rescind certain Incorporated NYSE Rules in substantive areas that are sufficiently addressed by NASD Rules.

FINRA believes that the proposed rule change will provide a timely solution to achieve greater harmonization between Incorporated NYSE Rules and NASD Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual Members. The proposed rule change would affect the Transitional Rulebook in its application to Dual Members only and does not necessarily reflect FINRA's intent or conclusion as to the ultimate rule text that will populate the Consolidated FINRA Rulebook.

Proposed Amendments

Allied Member

The proposed rule change would delete the term ''allied member'' from the Incorporated NYSE Rules. The ''allied member'' designation is a regulatory category based on a person's ''control'' over a member organization.[5] Allied membership, as currently administered, has no direct analogue under the FINRA membership scheme.

NYSE Rule 2(c) currently defines the term ''allied member'' as a natural person who is a general partner of a member organization or other employee of a member organization who controls,[6] or is a principal executive officer of, such member organization, and who has been approved by the NYSE as an allied member. In instances where the term ''allied member'' appears in a rule to denote an individual's status as a member organization ''control person,'' FINRA is proposing to substitute, for the term ''allied member,'' the newly defined category of ''principal executive'' (*see* proposed NYSE Rule 311.17). The proposed definition for ''principal executive'' is identical to the current definition of ''principal executive officer'' in NYSE Rule 311(b)(5) with additional language to clarify that the functional equivalents of such persons would also be included in this category. As such, FINRA is proposing to replace ''principal executive officer'' with ''principal executive.''

A ''principal executive'' would be defined to include: An employee of a member organization designated to exercise senior principal executive

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This proposal is an extension of the SRO Rule Harmonization Initiative, which compared NYSE regulatory requirements to corresponding NASD regulatory provisions. The purpose of the process was to achieve, to the extent practicable, substantive harmonization of the two regulatory schemes.

[4] *See* Securities Exchange Act Release No. 56142 (July 26, 2007), 72 FR 42195 (August 1, 2007) (SR–NYSE–2007–22).

[5] *See* NYSE Rule 304(b) (Allied Members and Approved Persons). FINRA did not incorporate NYSE Rule 304.

[6] *See* NYSE Rule 2(f) for the definition of ''control.''

responsibility over the various areas of the business of the member organization including: Operations, compliance with rules and regulations of regulatory bodies, finances and credit, sales, underwriting, research and administration; and any employee of a member organization who is a functional equivalent of such person. Thus, the ''principal executive'' designation would encompass each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Compliance Officer, Chief Legal Officer or any person assigned comparable functions or responsibilities (*e.g.*, a person in a Limited Liability Company with principal executive responsibilities but with other than a principal executive title).

Unlike the ''allied member'' designation, ''principal executive'' would not require a registration process, approval by the NYSE or a particular qualification examination. However, each ''principal executive'' would be required to take and pass any qualification examinations necessary to perform his or her assigned functions.

Buy-In Rules

In an effort to harmonize and update the SRO Operational, Clearing and Settlement Rules (collectively referred to herein as the ''Buy-In Rules''), FINRA is proposing to reposition NYSE Rules 283, 285, 286, 287, 288, 289, and 290 into NYSE Rule 282 so that NYSE Rule 282 would serve as a complete, central repository for all requirements and procedures related to transactions subject to the Buy-In Rules. The substance of the repositioned rules would not be altered by the proposed rule change. The proposed rule change would bring the NYSE Buy-In Rules closer to the format of NASD Rule 11810 (Buying-In).

Additionally, consistent with the NYSE's Omnibus filing, FINRA is proposing to add the substance of NYSE Rule 140 to NYSE Rule 282.[7] Although FINRA did not incorporate NYSE Rule 140 into its rulebook, FINRA staff believes that the Omnibus proposal appropriately places the substance of NYSE Rule 140 into Rule 282. FINRA is also proposing amendments to the current text of NYSE Rule 282 to clarify that fails that are subject to the rules of a Qualified Clearing Agency must comply with the procedures or requirements of the Qualified Clearing Agency. This proposal harmonizes the scope of NYSE Rule 282 with the scope of NASD's 11000 Rule Series.

Lastly, the proposed rule change would amend NYSE Rule 282 to adopt certain provisions of NASD Rule 11810 to further harmonize the requirements related to transactions subject to the Buy-In Rules. Specifically, FINRA proposes to add to the Supplementary Material of NYSE Rule 282 the following sections of NASD Rule 11810: (f) (Securities in Transit); (h) (''Close-Out'' Under Committee or Exchange Rulings); (i) (Failure to Deliver and Liability Notice Procedures); (j) (Contracts Made for Cash); (l) (''Buy-In'' Desk Required); and (m) (Buy-In of Accrued Securities).

NYSE Rule 311 (Formation and Approval of Member Organizations) and Its Interpretation

NYSE Rule 311 governs the formation and approval of member organizations. In addition to the ''allied member'' proposals to NYSE Rule 311 noted above, the proposed rule change would delete paragraph (h) of NYSE Rule 311, which prescribes the number of partners to be named in a member organization in order for it to conduct business. There is no equivalent NASD requirement. The proposed deletion recognizes that NYSE Rule 311(h) is outdated and no longer necessary in light of the current spectrum of member organizations' business models.

NYSE Rule 342.13 (Acceptability of Supervisors) and Its Interpretation

NYSE Rule 342.13(a) currently requires that persons who are to be assigned certain prescribed supervisory responsibilities[8] have a creditable three-year record as a registered representative or have three years of equivalent experience before functioning as a supervisor.[9] FINRA is proposing to amend NYSE Rule 342.13(a) and its Interpretation to eliminate the prescribed three-year record requirement for supervisory personnel. Additionally, the proposal would conform NYSE Rule 342.13(a) to the standard outlined in NASD Rule 1014(a)(10)(D) with respect to firms that are submitting an application to become FINRA members. In such instances, supervisory candidates would be required to have one year of ''direct experience'' or two years of ''related experience'' in the subject area to be supervised.

NYSE Rule 345 (Employees—Registration, Approval, Records) and Its Interpretation

NYSE Rule 345 and its Interpretation[10] currently provide that certain exam-qualified registered persons will not receive NYSE approval to perform functions pursuant to such qualifications without first completing certain prescribed training periods. To harmonize NYSE Rule 345 with NASD registration requirements, FINRA is proposing to eliminate the prescribed training periods in NYSE Rule 345 and its Interpretation. The proposed amendments would allow member organizations to determine, consistent with their overall supervisory obligations, the extent and duration of training for such registered persons before they are permitted to perform functions requiring registration.

NYSE Rule 345(a) prohibits member organizations from permitting any natural person to perform regularly the duties customarily performed by a registered representative, a securities lending representative, a securities trader or a direct supervisor of such persons, unless such person shall have been registered with, qualified by and is acceptable to the NYSE. To reduce regulatory duplication and in furtherance of the SRO Rule Harmonization Initiative, the proposed rule change would limit the prohibition in paragraph (a) to securities lending representatives and their direct supervisors. The substance of NYSE Rule 345(a) with respect to registered representatives and their supervisors is effectively addressed by NASD Rule 1031. FINRA is proposing to delete the registration category of ''securities trader'' from the Incorporated NYSE Rules because it does not serve any regulatory purpose. Registration as a securities trader requires an individual to pass the Series 7 examination, which qualifies an individual as a general securities representative. FINRA understands that the securities trader registration category was created to avoid application of the four-month training requirement for a registered representative.[11] In view of the fact that the four-month training requirement in NYSE Rule 345 is being eliminated, there is no need for an additional registration category tied to the Series 7. However, if the NYSE wishes to retain

[7] *See* proposed Rule 282.15.

[8] In this regard, NYSE Rule 342.13(a) references NYSE Rule 342(d) which requires that ''[q]ualified persons acceptable to the Exchange shall be in charge of: (1) Any office of a member or member organization, (2) any regional or other group of offices, (3) any sales department or activity.''

[9] NYSE Rule 342.13(a) also requires that persons assigned supervisory responsibility pursuant to NYSE Rule 342(d) must pass a qualification examination acceptable to the NYSE that demonstrates competence relevant to assigned responsibilities.

[10] *See* NYSE Rule Interpretation 345.15/01 and /02.

[11] *See* NYSE Rule 345.15(b)(2) and (5).

the securities trader registration category, it can do so in a unique NYSE rule.

NYSE Rule 345(b) currently prohibits any natural person, other than a member or allied member, to assume the duties of an officer with the power to legally bind such member or member organization unless such member or member organization has filed an application with and received the approval of the NYSE. The proposed rule change would delete NYSE Rule 345(b) in its entirety. There is no equivalent NASD rule.

NYSE Rule 346 (Limitations—Employment and Association With Members and Member Organizations) and Its Interpretation

NYSE Rule 346 sets forth limitations on the outside business activities of member organization employees. FINRA is proposing to delete NYSE Rule 346(c) which currently requires that prompt written notice be given to the NYSE whenever any member or member organization knows, or in the exercise of reasonable care should know, that any person, other than a member, allied member or employee, directly or indirectly, controls, is controlled by or is under common control with such member or member organization. FINRA believes that this provision is unnecessary as it is a requirement on Form BD that each broker-dealer disclose such control relationships.[12] The proposed rule change also harmonizes with the NASD regulatory structure as there is no corresponding NASD requirement.

NYSE Rule 407 (Transactions—Employees of Members, Member Organizations and the Exchange) provides, in part, that no employee of a member organization shall establish or maintain a securities or commodities account or enter into a private securities transaction without the prior written consent of his or her member organization. FINRA is proposing to reposition the requirements pertaining to ''private securities transactions'' (*e.g.*, interests in oil or gas ventures, real estate syndications, tax shelters, etc.) from NYSE Rule 407 [13] to NYSE Rule 346 since NYSE Rule 346 more directly addresses issues related to the outside activities of registered persons. Additionally, FINRA is proposing definitions of the terms ''private securities transactions,'' ''selling compensation'' and ''immediate family members'' that are substantially identical to the NASD's corresponding definitions.[14]

NYSE Rule 346(e) currently requires that persons who are assigned or delegated supervisory authority pursuant to NYSE Rule 342 devote their entire time during business hours to their member organization, unless otherwise permitted by the NYSE. FINRA is proposing amendments to NYSE Rule 346(e) and Supplementary Material section .10 that would eliminate the SRO approval requirement in order for supervisory persons to devote less than their entire time to the business of their member organization. In lieu thereof, the amended rule would require the prior written approval of the member organization, pursuant to the exercise of due diligence, for such arrangements. The proposed rule change would require the identification of any entity for which the supervisory person will be performing services during business hours and a description of such services. The member organization's written approval would be required to set forth the approximate amount of time the supervisory person is expected to devote to each entity, with particular attention paid to the approximate time expected to be required for the person, based upon qualifications and experience, to effectively discharge his or her supervisory responsibilities on behalf of the member organization. In addition, the amendments would require documentation that the member organization has made a good faith determination that the arrangement will not compromise the protection of investors or the public interest, compromise the supervisor's duties at the member organization, or give rise to a material conflict of interest. FINRA is also proposing, as conforming changes, to delete the NYSE Rule 346 Interpretation relating to the outside connections of supervisory persons [15] and to amend the Interpretation to NYSE Rule 311, which includes a reference to Rule 346(e).

NYSE Rule 351 (Reporting Requirements)

NYSE Rule 351(d) requires each member organization to report certain statistical information regarding customer complaints. The requirement currently extends to both oral and written complaints. The proposed rule change would adopt NYSE Rule 351.13 to limit the definition of the term ''customer complaint'' to any written statement of a customer, or any person acting on behalf of a customer, other than a broker or dealer, alleging a grievance involving the activities of those persons under the control of a member organization. This proposed definition is substantially similar to the current definition in NASD Rule 3070(c).

NYSE Rule 352 (Guarantees, Sharing in Accounts, and Loan Arrangements)

NYSE Rule 352 restricts the extent to which member organization personnel may share in customer account profits or losses. NYSE Rule 352(b) generally prohibits member organizations, allied members and registered representatives from sharing profits or losses in any customer account. However, NYSE Rule 352(c) permits such sharing in proportion to financial contributions made to a joint account.

First, FINRA is proposing to amend NYSE Rule 352(c) to exempt, from the proportional contribution requirement, joint accounts with immediate family members held by principal executives or registered representatives of a member organization. This amendment would limit the regulation of accounts that may reasonably entail profit and loss participation on a disproportionate basis, as with joint accounts between husband and wife, while retaining coverage of the rule for other accounts. NASD Rule 2330(f)(1)(A) similarly addresses the circumstances under which a FINRA member or a person associated with a FINRA member may share in profits and losses with a customer, provided such sharing is proportionate to the financial contributions of each account holder; NASD Rule 2330(f)(1)(B) exempts from this proportionality requirement accounts shared between an associated person and a customer who is an immediate family member of such associated person.

Second, the proposed rule change would make clear that any sharing arrangement entered into pursuant to NYSE Rule 352(c) is subject to the NYSE Rule 352(a) provision that no member organization shall guarantee or in any way represent that it will guarantee any customer against loss in any account or on any transaction; and no employee of such member organization shall guarantee or in any way represent that either he or she, or his or her employer, will guarantee any customer against loss in any customer account or on any customer transaction.

Third, the proposed rule change would define the term ''immediate family'' in NYSE Rule 352(c) to include

[12] *See* Question 10 on Form BD.

[13] *See* NYSE Rule 407(b) and section .11 in the Supplementary Material.

[14] *See* proposed changes to NYSE Rule 346 Supplementary Material.

[15] *See* NYSE Rule Interpretation 346/03 (Outside Connections—Supervisory Persons).

parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the principal executive or registered representative contributes directly or indirectly. This proposed definition would harmonize with the standard under NASD Rule 2330(f)(1)(B). The existing definition of ''immediate family'' in NYSE Rule 352(g) is retained for other provisions in the Rule, essentially allowing persons acting in the capacity of a registered representative or principal executive to lend to or borrow from a more extensive range of family members. The broader NYSE Rule 352(g) standard is also consistent with the corresponding NASD standard in connection with borrowing from or lending to customers.[16]

Lastly, FINRA is proposing amendments to NYSE Rule 352(d) to streamline the reference in the rule to Rule 205–3 of the Investment Advisers Act of 1940. Specifically, the revised provision would provide that, notwithstanding the general prohibition against sharing in profits under paragraph (b), a person acting as an investment adviser (whether or not registered as such) may receive compensation based on a share of profits or gains in an account if all of the conditions in Rule 205–3 of the Investment Advisers Act of 1940 are satisfied. This proposal better aligns NYSE Rule 352 with NASD Rule 2330(f).

NYSE Rule 404 (Individual Members Not to Carry Accounts)

A FINRA Letter of Approval that details the scope of approved activities is sent to new FINRA members. The requirements of NYSE Rule 404 are duplicative of this Letter. Therefore, FINRA is proposing to rescind NYSE Rule 404.

NYSE Rule 408 (Discretionary Power in Customers' Accounts)

NYSE Rule 408 provides, in part, that no employee of a member organization shall exercise discretionary power in any customer's account or accept orders for an account from a person other than the customer without first obtaining written authorization from the customer. FINRA is proposing amendments to NYSE Rule 408(a) that would require member organizations to obtain the signature of any person or persons authorized to exercise discretion in such accounts, of any substitute so authorized, and the date such discretionary authority was granted. The proposed amendment would conform NYSE Rule 408(a) to corresponding requirements in NASD Rule 3110(c)(3).

NYSE Rule 412 (Customer Account Transfer Contracts) and Its Interpretation

NYSE Rule 412 governs the transfer of customer accounts from one member to another. This rule is duplicative of NASD Rule 11870 (Customer Account Transfer Contracts). Thus, FINRA is proposing to rescind NYSE Rule 412 and its Interpretation.

NYSE Rule 436 (Interest on Credit Balances) and Its Interpretation

FINRA is proposing to rescind NYSE Rule 436 and its Interpretation as it has become outdated and is no longer applicable to the current business models of members. There is no comparable NASD Rule.

NYSE Rule 446 (Business Continuity and Contingency Plans)

NYSE Rule 446 is nearly identical to NASD Rules 3510 (Business Continuity Plans) and 3520 (Emergency Contact Information). To reduce regulatory duplication in these areas and to advance the efforts to create a Consolidated FINRA Rulebook, FINRA is proposing to delete NYSE Rule 446 because NASD Rules sufficiently address this area.

Following Commission approval of the proposed rule change, FINRA will publish a *Regulatory Notice(s)* setting forth the effective date(s) of the proposals.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[17] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will provide greater harmonization between Incorporated NYSE Rules and NASD Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual Members. Where proposed amendments do not entirely conform to existing NASD rules or address a provision without a direct NASD Rule counterpart, FINRA believes the standards they would establish otherwise further the objectives of the Act by providing greater regulatory clarity and practicality and relieving unnecessary regulatory burdens in the interim period until a Consolidated FINRA Rulebook is completed.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which FINRA consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2008–036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2008–036. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

[16] *See* NASD Rule 2370(c) (Borrowing From or Lending To Customers).

[17] 15 U.S.C. 78o–3(b)(6).

post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2008–036 and should be submitted on or before August 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15817 Filed 7–11–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58114; File No. SR–NASD–2007–041]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc. (f/k/a National Association of Securities Dealers, Inc.); Notice of Filing of Amendment No. 2 to Proposed Rule Change To Amend the Minimum Price-Improvement Standards Set Forth in NASD Interpretive Material (IM) 2110–2

July 7, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2008, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) [3] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendment No. 2 to SR–NASD–2007–041 as described in Items I, II, and III below, which Items have been substantially prepared by FINRA.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA proposes to amend the proposed rule change to address an inconsistency in the application of the proposed minimum price-improvements standards. The text of the proposed rule change is available on FINRA's Web site (*http://www.finra.org*), at FINRA's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 27, 2007, FINRA filed with the Commission SR–NASD–2007–041, proposing amendments to the minimum price-improvement provisions in IM–2110–2 (''original proposal''). On August 28, 2007, the Commission published for comment the proposed rule change in the **Federal Register**.[5] The Commission received one commenter letter on the proposed rule change.[6] On November 1, 2007, FINRA submitted a response letter to the Commission.[7] On May 20, 2008, FINRA filed with the Commission Amendment No. 1 to the proposed rule change. FINRA is filing this Amendment No. 2, which replaces and supersedes Amendment No. 1 to SR–NASD–2007–041, to amend the proposed rule change to address an inconsistency in the application of the proposed minimum price improvement standards as discussed herein.

On February 26, 2007, the Commission approved SR–NASD–2005–146, which, among other things, expanded the scope of IM–2110–2 [8] to apply to over-the-counter (''OTC'') equity securities and amended the minimum level of price-improvement that a member must provide to trade ahead of an unexecuted customer limit order (''price-improvement standards''). The rule changes in SR–NASD–2005–146 were initially scheduled to become effective on July 26, 2007.[9]

Following Commission approval of SR–NASD–2005–146, several firms raised concerns regarding the timing of the implementation of the proposed rule change and the application of the approved minimum price-improvement standards. In response to these concerns, FINRA filed a proposed rule change to delay the effective date of the changes in SR–NASD–2005–146 pending its review of the amended price-improvement standards.[10]

Subsequently, FINRA filed SR–NASD–2007–041 with the Commission to further amend the price-improvement standards in IM–2110–2 based on new tiered standards that varied according to the price of the customer limit order. In response to the publication of the proposed rule change in the **Federal Register**, the Commission received one comment letter on the proposal.[11]

As further detailed in the FINRA Response Letter, the commenter noted an inconsistency in the application of proposed minimum price-improvement standards in low-priced securities when the customer limit order and the proprietary trade fall into different minimum price improvement tiers (*e.g.*, a customer limit order to sell is priced

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[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 26, 2007, the Commission approved a proposed rule change filed by the NASD to amend the NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007) (SR–NASD–2007–053).

[4] FINRA filed the original proposed rule change on June 27, 2007. FINRA filed Amendment No. 1 to the proposed rule change on May 20, 2008. Amendment No. 2 supersedes and replaces Amendment No. 1.

[5] *See* Securities Exchange Act Release No. 56297 (August 21, 2007), 72 FR 49337 (August 28, 2007) (notice of filing of SR–NASD–2007–041).

[6] *See* Letter to Secretary, Commission, from Jess Haberman, Compliance Director, Fidessa Corp., dated September 5, 2007.

[7] *See* Letter from Andrea Orr, FINRA, to Nancy M. Morris, Secretary, Commission, dated November 1, 2007 (''FINRA Response Letter'').

[8] Currently, IM–2110–2 generally prohibits a member from trading for its own account in an exchange-listed security at a price that is equal to or better than an unexecuted customer limit order in that security, unless the member immediately thereafter executes the customer limit order at the price at which it traded for its own account or better.

[9] *See* NASD Notice to Members 07–19 (April 2007).

[10] *See* Securities Exchange Act Release No. 56103 (July 19, 2007), 72 FR 40918 (July 25, 2007) (notice of filing and immediate effectiveness of SR–NASD–2007–039). *See also* See Securities Exchange Act Release No. 56822 (November 20, 2007), 72 FR 67326 (November 28, 2007) (notice of filing and immediate effectiveness of SR–FINRA–2007–023); and Securities Exchange Act Release No. 57133 (January 11, 2008), 73 FR 3500 (January 18, 2008) (notice of filing and immediate effectiveness of SR–FINRA–2007–038).

[11] *See supra* note 6.

at $1.00 and the proprietary trade is at $.998). For example, assume the best inside market for an NMS stock is $.996 to $1.00 and a firm is holding customer limit orders to sell at prices of $.998 and $1.00. If the firm sells for its own account at $.996, only customer limit orders to sell priced below $.998 and from $1.00 up to, but not including, $1.006 would be protected due to the firm's $.996 triggering proprietary trade. As a result, the firm would not have an obligation under IM–2110–2 to protect the more aggressively priced $.998 customer limit order to sell (*i.e.*, the minimum price improvement standard applicable to that order is the lesser of $.01 or one-half (½) of the current inside spread ($.002 (½ of $.004)), such that the $.996 proprietary trade would only trigger customer limit orders priced less than $.998), but would have an obligation to protect the $1.00 customer limit order to sell (*i.e.*, the minimum price improvement standard applicable to that order is $.01 such that a $.996 proprietary trade would trigger customer limit orders priced at $1.00 up to, but not including, $1.006).

In the FINRA Response Letter, FINRA indicated that firms may choose to voluntarily protect those more aggressively priced customer limit orders that fall within the gaps, which would not be an unreasonable policy or procedure and would be consistent with the principles underlying IM–2110–2 and the duty of best execution. However, upon further reflection, FINRA believes that it is important that the more aggressively priced customer limit orders also receive protection and that any potential ''gaps'' be eliminated. Therefore, FINRA is now proposing to require, and codify as part of IM–2110–2, that any more aggressively priced customer limit orders also receive protection. In other words, once a customer limit order is triggered under the Rule, firms would be required to protect any more aggressively priced customer limit orders, even if those limit orders were not directly triggered by the minimum price improvement standards of IM–2110–2. FINRA is not, however, mandating any particular order handling procedures or execution priorities among protected orders. A firm may choose any reasonable methodology for the way in which it executes multiple orders triggered by the Interpretive Material, but the firm must ensure that such methodology is applied consistently and complies with applicable rules and regulations.

Using the example above, once the limit order priced at $1.00 is activated upon the execution of the firm's trade at $.996 (*i.e.*, it is activated because it is within .01 of the price of the firm's trade), a firm may implement a methodology that executes all more aggressively priced customer limit orders first (*i.e.*, the limit order priced at $.998) before executing the limit order priced at $1.00. The proposed requirements would only apply in the limited circumstance where a firm has a limit order that is protected by IM–2110–2, but more aggressively priced customer limit orders are not protected. Therefore, in the above example, if the firm was only holding a customer limit order to sell of $.998 (and not a customer limit order of $1.00), the $.998 order would not be triggered by the proposed requirements.

As noted above, FINRA proposes to implement the proposed rule change on the final implementation date of SR–NASD–2005–146, which will be 60 days after Commission approval of this filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change better reflects trading in low-priced securities and the application of IM–2110–2.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in the **Federal Register** and the SEC received one commenter letter, which was previously summarized and responded to in the FINRA Response Letter and therefore is not being included as part of this Amendment No. 2.[13]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NASD–2007–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2007–041. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying

[12] 15 U.S.C. 78o–3(b)(6).

[13] *See supra* note 6.

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2007–041 and should be submitted on or before August 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15889 Filed 7–11–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–58115; File No. SR–FINRA–2007–026]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change as Modified by Amendment No. 1 Thereto for TRACE To Disseminate Additional Data Elements Relating to Each Transaction

July 7, 2008.

I. Introduction

On December 5, 2007, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'') [1]) filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] a proposal to adopt a policy to publicly disseminate additional data elements for corporate bond transactions that are reported to the Trade Reporting and Compliance Engine (''TRACE''). These additional elements are whether a transaction is an inter-dealer transaction or a transaction with a customer and, if the latter, whether the dealer is on the buy or the sell side. On May 20, 2008, FINRA filed Amendment No. 1 to the proposed rule change. The proposal, as modified by Amendment No. 1, was published for comment in the **Federal Register** on June 2, 2008.[4] The Commission received one comment on the proposal.[5] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Under the TRACE rules, a FINRA member that is party to a transaction in a TRACE-eligible security must report several types of information to the TRACE system—including whether it is buying or selling (''Buy/Sell data element'') and whether its counterparty is a broker-dealer or a customer (''Dealer/Customer data element'').[6] Currently, these two data elements are not disseminated.[7]

FINRA has proposed that these two data elements now be publicly disseminated for each transaction. FINRA believes that these data elements would enhance market transparency by allowing TRACE users to better understand what a reported price actually represents. Customer transaction prices are ''all-in prices'' that include a mark-up/mark-down or a commission, while interdealer transaction prices are not. A customer could compare the ''all-in price'' of its transaction with other customer transactions. Dealer pricing could be approximated by ''backing out'' the mark-up, mark-down, or commission from the ''all-in price'' of a customer transaction.

FINRA represented that it would announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following any Commission approval. The effective date would be no later than 120 days following publication of that *Regulatory Notice*.

III. Summary of Comments

The Commission received one comment. The commenter strongly supported the proposal, arguing that dissemination of the additional data elements ''would improve the system tremendously.'' [8]

IV. Discussion and Findings

After carefully considering the proposal and the comment submitted, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[10] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission notes that it has previously approved the collection and real-time dissemination of similar transaction information for municipal securities.[11] The Commission believes that the current proposal will make the corporate debt markets more transparent by allowing market participants to make more accurate assessments of reported prices for transactions in TRACE-eligible securities.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–FINRA–2007–026) as modified by Amendment No. 1 thereto be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15890 Filed 7–11–08; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

[1] Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation, Inc. Generally, pre-consolidation actions by NASD are referred to as FINRA actions, except for NASD Rules, when referenced singularly, and NASD *Notices to Members*. When FINRA files proposed rule changes to create a consolidated FINRA rule manual, such NASD rules and interpretations, as incorporated in the consolidated FINRA Manual, will no longer be referred to as ''NASD'' rules.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Release No. 34–57866 (May 23, 2008), 73 FR 31518 (June 2, 2008) (SR–FINRA–2007–026).

[5] *See* submission via SEC WebForm from Rebecca E. Carsten, dated June 20, 2008.

[6] For an interdealer transaction, FINRA receives a TRACE report from each dealer but disseminates data reflecting only the information received from the sell side. For a customer transaction, only one side of the trade has to be reported—the dealer side—and FINRA disseminates the data from the dealer's report.

[7] The data elements that are disseminated include: The bond identifier (*i.e.*, the TRACE symbol); the price inclusive of any mark-up, mark-down, or commission; the quantity (expressed as the total par value); the yield; the time of execution; and, if the transaction were executed on a day other than when TRACE data is being disseminated, the actual date of execution.

[8] *See supra* note 5.

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78o–3(b)(6).

[11] *See* Securities Exchange Act Release No. 42241 (December 16, 1999), 64 FR 72123 (December 23, 1999) (SR–MSRB–99–8) (requiring that transaction reports be disseminated for certain municipal securities transactions identifying the transaction as either a sale by a dealer to a customer, a purchase by a dealer from a customer, or an inter-dealer trade); Securities Exchange Act Release No. 50294 (August 31, 2004), 69 FR 54170 (September 7, 2004) (SR–MSRB–2004–02) (implementing real-time reporting for most municipal securities transactions and adding a capacity field to reports to allow for the dissemination of data showing whether an inter-dealer trade was done as agent for a customer).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58102; File No. SR–NASDAQ–2008–019]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto To Remove From the Nasdaq Rules Fee Provisions Relating to Nasdaq's Mutual Fund Quotation Service

July 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 12, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared substantially by Nasdaq. On July 3, 2008, Nasdaq filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to remove from the Nasdaq rules fee provisions relating to Nasdaq's Mutual Fund Quotation Service (''MFQS''). Nasdaq's rule book contains rules pertaining to ''facilities'' of the exchange, and MFQS is not a ''facility'' within the meaning of the Act. The text of the proposed rule change is available at *http://www.complinet.com/nasdaq,* the principal offices of Nasdaq, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Developed by the National Association of Securities Dealers (''NASD'') in the 1980s, MFQS receives daily price-related information from participating money market funds, mutual funds and unit investment trusts (''UITs''). Nasdaq disseminates the MFQS-collected information (as well as certain related publicly-available information) to the public on a daily basis through its Mutual Funds Dissemination Service (''MFDS''). Neither MFQS nor MFDS includes either ''last sale'' reports or other ''real time'' information. Both members and non-members of Nasdaq are able to participate in MFQS and to receive the information.

Services similar to MFQS/MFDS can be provided by other entities, including entities that are not national securities exchanges. The ease with which money market, mutual fund and UIT information can be collected and transmitted over the Internet makes the environment in which MFQS and MFDS operate potentially highly competitive.

Nasdaq included MFQS in its rule book when Nasdaq was registered as a national securities exchange in 2006.[3] Current Nasdaq Rules 7033 (a) through (d) contain charges paid by funds and UITs for participating in MFQS. Rules 7033(e) and 7019(b) contain charges paid by subscribers for the MFQS information provided to them via the MFDS.[4]

Nasdaq believes that by operating MFQS and MFDS, it facilitates the distribution of information regarding non-exchange activity. As such, Nasdaq does not believe that either MFQS or MFDS is a facility of a national securities exchange within the meaning of the Act or that the applicable charges are rules that need to be filed with the Commission under Section 19(b)(1) of the Act [5] and Rule 19b–4 thereunder.[6]

If, at a later date, Nasdaq proposed to modify the operation of MFQS (or MFDS) in a manner that would cause this service to fit within the definition of a facility of the exchange, or if Nasdaq proposed to tie the fees for this service to fees for or usage of exchange services, Nasdaq would file a proposed rule change with the Commission.[7]

2. Statutory Basis

Nasdaq believes that MFQS is not a facility of a national securities exchange within the meaning of the Act and the terms of MFQS use are not rules that must be filed with the Commission under Section 19(b)(1) of the Act [8] and Rule 19b–4 thereunder.[9] Therefore, removing the applicable provisions from the Nasdaq rule book would be consistent with the provisions of Section 6(b) of the Act.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[3] As Nasdaq prepared to begin operating as an independent national securities exchange in 2006, it replicated sections of the NASD rule manual and proposed that they be included in the new Nasdaq rule manual in the same form. *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

[4] The language of the current Rule 7033(e), which had been approved for inclusion in the NASD rule manual prior to Nasdaq's separation, was inadvertently omitted from the form of the Nasdaq rule manual approved by the Commission in 2006. *See supra.* Since at that time no substantive changes to these provisions were intended, the omitted language was subsequently reinserted in the Nasdaq rule manual with retroactive effect to the 2006 separation date. *See* Securities Exchange Act Release No. 57347 (February 19, 2008), 73 FR 10080 (February 25, 2008) (SR–NASDAQ–2007–100).

[5] 15 U.S.C. 78s(b)(1).

[6] 17 CFR 240.19b–4.

[7] *See* Securities Exchange Act Release No. 56237 (August 9, 2007), 72 FR 46118 (August 16, 2007) (SR–NASDAQ–2007–043) (approving removal from Nasdaq rule book of provisions governing operation of the ACES system).

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 240.19b–4.

[10] 15 U.S.C. 78f(b).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2008–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–019. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2008–019 and should be submitted on or before August 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15818 Filed 7–11–08; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58112; File No. SR–NSX–2008–11]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment Nos. 1, 2, and 3 Thereto Relating to the Termination of the Intermarket Trading System Plan and to a Technical Change to Rule 8.15

July 7, 2008

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 19, 2008, the National Stock Exchange (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On June 27, 2008, the Exchange filed Amendment Nos. 1 and 2 to the proposal. On July 2, 2008, the Exchange filed Amendment No. 3 to the proposal. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Due to the termination of the Intermarket Trading System (''ITS'') Plan, the Exchange is proposing to eliminate all references to the ITS Plan in its Rules and Fee Schedules, and to otherwise make technical and conforming changes related to the termination of ITS, as well as a minor technical change to Rule 8.15 (''Imposition of Fines for Minor Violation(s) of Rules'').

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Chapter XIV (''Intermarket Trading System Plan'') of the NSX Rules provides the rules relating to the ITS Plan under which the Exchange conducted intermarket trading in exchange-listed equity securities with those market centers that were linked under the ITS Plan.[3] In connection with the implementation of Regulation NMS,[4] the ITS Plan was officially eliminated.[5] Because elimination of ITS has rendered Chapter XIV obsolete, the Exchange now proposes to eliminate Chapter XIV, the Fee Schedule for ITS Transactions, and all other references to Chapter XIV and the ITS Plan in the NSX Rules.

In addition, the Exchange proposes to make a technical and conforming change to Interpretation .01 to Rule 8.15, which has been renumbered due to the deletion of ITS related provisions. The Exchange also proposes that the Rule cited in this Interpretation be changed from Rule 11.9(c) to Rule 11.8(a)(1). This change is required as Rule 11.9(c), relating to the Exchange's legacy trading system, has been functionally replaced by Rule 11.8(a)(1) relating to the Exchange's new trading system, NSX BLADE.[6]

Finally, the Exchange proposes to amend NSX Rule 11.3(a)(ii) to allow

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983)(File No. 4–208).

[4] 17 CFR 242.600 *et al.*

[5] *See* Securities Exchange Act Release No. 55397 (March 5, 2007), 72 FR 11066 (March 12, 2007)(File No. 4–208).

[6] *See* Securities Exchange Act Release No. 54391 (August 31, 2006), 71 FR 52836 (September 7, 2006) (SR–NSX–2006–08).

sub-penny bids, offers, orders and indications of interest (hereinafter ''orders'') in all securities where such orders are priced less than $1.00 per share. Due to programming issues relating to ITS, the rule previously only permitted sub-penny price increments for securities priced below $1.00 per share that were listed on the Nasdaq Stock Market. Now that the ITS Plan has terminated, and consistent with Regulation NMS, the Exchange proposes to allow sub-penny increments for all securities traded on the Exchange for orders priced less than $1.00 per share, regardless of the listing exchange.[7]

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] As required under Rule 19b–4(f)(6)(iii) under the Act,[14] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[15] However, Rule 19b–4(f)(6)(iii)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and render the proposed rule change operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the 30-day operative delay would enable the Exchange to: eliminate all references to the ITS Plan in its Rules and Fee Schedules and to otherwise make technical and conforming changes required as a result of the termination of the ITS Plan as quickly as possible and eliminate any potential confusion. The waiver would also allow sub-penny bids, offers, orders in all securities where such orders are priced less than $1.00 per share, which would enable investors to expand their trading options. Accordingly, the Commission designates the proposal to be operative upon filing with the Commission.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSX–2008–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2008–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2008–11 and should be submitted on or before August 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15887 Filed 7–11–08; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 242.612.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *Id.*

[16] *Id.*

[17] For purposes of waiving the operative date of this proposal only, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58108; File No. SR–NYSE–2007–64]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Section 31 Accumulated Funds

July 7, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On June 26, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Supplementary Material .30 to NYSE Rule 440H (''Activity Assessment Fee'') to allow member firms to voluntarily submit, during a six-month period after the effective date of this rule proposal, funds previously accumulated by member firms to satisfy their, and subsequently NYSE's, obligation to remit SEC Section 31-related fees, to the Exchange. In addition, a member or member organization may designate all or part of any accumulated excess held by the Exchange and allocated to such member or member organization to be used by the Exchange in accordance with the terms of proposed Supplementary Material .30. Finally, to the extent the payment of these historically accumulated funds or Exchange-accumulated excess is in excess of the fees due the Commission from NYSE under Section 31 of the Act,[3] such surplus shall be used by the Exchange to offset Exchange regulatory costs.

The text of the proposed rule changes is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Section 31 of the Act and Rule 31 thereunder,[4] national securities exchanges and associations (collectively, ''self-regulatory organizations'' or ''SROs'') are required to pay a transaction fee to the SEC that is designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. To offset this obligation, the Exchange assesses its members and member organizations an Activity Assessment Fee in accordance with NYSE Rule 440H. NYSE Rule 440H requires members and member organizations effecting ''covered sales'' (as defined in Section 31 of the Act) of securities on the Exchange to pay Activity Assessment Fees based upon their covered sales. The Exchange calculates such fees by multiplying the aggregate dollar amount of covered sales effected on the Exchange during the appropriate period by the Section 31(b) fee rate in effect during that period. Clearing members may in turn seek to charge a fee to their customers or correspondent firms. Any allocation of the fee between the clearing member and its correspondent firm or customer is the responsibility of the clearing member.

Reconciling the amounts billed by the Exchange and the amounts collected from the customers historically had been difficult for member firms, causing surpluses to accumulate at some broker-dealer firms (referred to herein as ''accumulated funds''). These accumulated funds were not remitted to NYSE by certain firms, despite the fact that these charges may have been previously identified as ''Section 31 Fees'' or ''SEC Fees'' by the firms.[5] In addition, prior to direct billing of members and member organizations of Activity Assessment Fees as of June 1, 2005, the Exchange utilized ''self-reporting'' on Form 120–A of amounts payable under Rule 440H, and the Exchange has accumulated amounts so paid in excess of amounts paid by the Exchange to the SEC pursuant to Section 31 of the Act (''Exchange accumulated excess'').

In November 2004, the Exchange and other SROs received a letter from the SEC's Division of Market Regulation[6] requesting, among other things, that the Exchange conduct an analysis to ascertain the amount of accumulated funds and present a plan for broker-dealers to dispose of or otherwise resolve title to such accumulated funds. Following discussion among the SROs and staff of the Division of Market Regulation, in an effort to ascertain the amount of accumulated funds, NASD surveyed 240 member clearing and self-clearing firms to review their practices regarding the collection of such fees from customers. After compiling and analyzing the data provided by member firms, NASD staff found that over half of the firms surveyed did not have an accumulated funds balance. NASD worked with the other SROs to recommend a potential solution to allow NASD and other SRO member firms to resolve title to the accumulated funds. It was determined, based upon information provided in connection with NASD's survey, that it would be virtually impossible to return customer-related accumulated funds to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78ee.

[4] 17 CFR 240.31.

[5] The SEC stated in its release adopting new Rule 31 and Rule 31T that ''it is misleading to suggest that a customer or [SRO] member incurs an obligation to the Commission under Section 31.'' *See* Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004). In response to this statement, the Exchange amended Rule 440H to refer to this fee as an ''Activity Assessment Fee.'' *See* Securities Exchange Act Release No. 52018 (July 12, 2005), 70 FR 41467 (July 19, 2005) (SR–NYSE–2005–39). The Exchange issued Information Memos regarding the Exchange's ''Activity Assessment Fee'' and the SEC's ''Section 31 Fee'', and provided guidance for members and member organizations that choose to charge their customers fees. *See* Information Memo 05–48 (July 19, 2005) and Information Memo 05–36 (May 13, 2005).

[6] As of November 2007, the Division of Market Regulation was renamed the Division of Trading and Markets.

customers that had paid these funds to the firms.[7]

The proposed rule change is aimed at enabling those fees that may have been collected for purposes of paying an ''SEC Fee'' or ''Section 31 Fee'' to be used to pay such fees. The Exchange is proposing new Supplementary Material .30 to NYSE Rule 440H that will allow firms, on a one-time-only basis, voluntarily to remit historically accumulated funds to the Exchange. These funds then would be used to pay the Exchange's current Section 31 fees in conformity with prior representations made by member firms. In addition, a member or member organization could designate all or part of the Exchange accumulated excess held by the Exchange and allocated to such member or member organization to be used by the Exchange in accordance with the terms of Supplementary Material .30.

Finally, to the extent the payment of these historically accumulated funds or Exchange accumulated excess is in excess of the fees due the SEC from NYSE under Section 31, such surplus shall be used by the Exchange to offset Exchange regulatory costs. Specifically, the Exchange will subject such surplus to the same treatment utilized with respect to unused fine income that has accumulated beyond a level reasonably necessary for future contingencies. That is, the board of directors of NYSE Regulation would utilize any such surplus to fund one or more special projects of NYSE Regulation, to reduce fees charged by NYSE Regulation to its member organizations or the markets that it serves, or for a charitable purpose.[8]

The Exchange proposes that the effective date of the proposed rule change be the date on which any Commission order approving the proposed rule change is published in the **Federal Register**. In addition, Supplementary Material .30 to Rule 440H would automatically sunset six months after the effective date.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[10] in general, and further the objectives of Section 6(b)(5),[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 Exchange believes that the proposed rule change will provide a transparent way of addressing the issue of accumulated funds held at the member firm level as well as the Exchange accumulated excess. As this proposed rule change would automatically sunset, it will be of limited duration. Moreover, based on the reminder set for this in the proposed Supplementary Material .30 to NYSE Rule 440H and the issuance of prior Information Memos on this matter, the accumulation of funds that are collected and disclosed as ''Section 31 Fees'' or ''SEC Fees'' should not reoccur.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2007–64 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–64. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–64 and should be submitted on or before August 4, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Changes

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In addition, the Commission finds good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing. The Commission previously found similar proposals from other SROs to be

[7] NASD had asked all surveyed firms whether they could ''identify and relate the funds to specific customers on a transaction by transaction basis.'' The surveyed firms universally stated that tracking fractions of a penny to individual customers would be impossible and any over-collections could not be passed back at the customer level. *See* Securities Exchange Act Release No. 55886 (June 8, 2007), 72 FR 32935 (June 14, 2007) (Order approving SR–NASD–2007–027).

[8] *See* Securities Exchange Act Release No. 55003 (December 22, 2006), 71 FR 78497 (December 29, 2007) (SR–NYSE–2006–109) (approved in Securities Exchange Act Release No. 55216 (January 31, 2007), 72 FR 5779 (February 7, 2007) (relating to NYSE Regulation policies regarding exercise of power to fine NYSE member organizations and use of money collected as fines).

[9] The proposed effective date and sunset date of the proposed rule change are comparable to those approved by the Commission for a similar proposed rule change by the American Stock Exchange LLC (''Amex''). *See* Securities Exchange Act Release No. 57829 (May 16, 2008), 73 FR 30173 (May 23, 2008) (SR–Amex–2007–107).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

consistent with the Act.[13] The Commission is not aware of any issue that should cause it to revisit those findings or preclude the Commission from approving the NYSE proposal on the same basis. The Commission notes that, because the program is voluntary, it imposes no obligation on any NYSE member that believes that accumulated funds should be retained or disposed of in another manner.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–2007–64), as modified by Amendment No. 1, be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15816 Filed 7–11–08; 8:45 am]

BILLING CODE 8010–01–P

[13] *See* Securities Exchange Act Release No. 57829 (May 16, 2008), 73 FR 30173 (May 23, 2008) (SR–Amex–2007–107); Securities Exchange Act Release No. 55886 (June 8, 2007), 72 FR 32935 (June 14, 2007) (SR–NASD–2007–027).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58109; File No. SR–NYSEArca–2008–47]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Waive Retroactively as of June 24, 2008, Certain Initial Listing Fees for Companies Transferring the Listing of Their Securities From Any Other National Securities Exchange

July 7, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 24, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposal from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to waive initial listing fees for companies transferring the listing of their equity securities from any other national securities exchange. The proposed fee waiver would be applied retroactively to any companies that apply to list after the date of initial submission of this filing. The text of the proposed rule change is available at the Exchange's principal office, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to waive initial listing fees for companies transferring the listing of their securities from any other national securities exchange. The waiver will apply to all classes of securities. The Exchange had previously waived initial listing fees in these circumstances for all companies that transferred from the New York Stock Exchange (''NYSE'') at any time or from Nasdaq Stock Market (''Nasdaq'') or the American Stock Exchange prior to December 31, 2007, or had applied to list prior to that date.[3] The proposed amendment brings the Exchange's fee policy in line with those of the NYSE and Nasdaq,[4] both of which currently provide fee waivers to companies transferring from the other national securities exchanges. The proposed fee waiver would be applied retroactively to any companies that apply to list after the date of initial submission of this filing.

Issuers of securities that qualify for the proposed waiver of initial listing fees will be subject to the same level of annual fees and listing of additional shares fees as other NYSE Arca issuers. The proposed rule change will not affect the Exchange's commitment of resources to its regulatory oversight of the listing process or its regulatory programs. Specifically, companies that benefit from the waiver will be reviewed for compliance with the Exchange initial and continued listing standards in the same manner as any other company that applies to be listed on the Exchange. The Exchange will conduct a full and independent review of each issuer's compliance with the Exchange's initial listing standards.

The Exchange believes that the elimination of such fees in the case of securities transferring from other national securities exchanges is justified on several grounds. An issuer that already paid initial listing fees to another national securities exchange when it became a publicly traded company is reluctant to pay a second initial listing fee to another listing venue, even if it concludes that the Exchange offers the issuer and its investors superior services and market quality. Even if an issuer concludes that the Exchange would provide a superior market for its stock, the benefits of the transfer must currently be weighed against the cost of initial inclusion. Since the expected benefits of the transfer would be diffused among the issuers' investors and realized over time, but the initial listing fees must be paid by the issuer immediately, the Exchange is concerned that issuers that stand to benefit may nevertheless opt to forgo a transfer. As such, the Exchange believes that assessing the initial fees against issuers that have already paid fees to list on another market imposes a burden on the competition between exchange markets and markets other than exchange markets, a competition that the Exchange believes is one of the central goals of the national market system. This concern is particularly great in light of the fact that the Commission has approved the waiver of initial listing fees by Nasdaq with respect to the listing of any security being transferred from another national securities exchange.[5]

The Exchange understands that the effect of this proposed rule change will be to impose a lower level of listing fees

[3] *See* Securities Exchange Act Release No. 54007 (June 16, 2006), 71 FR 36155 (June 23, 2006) (SR–PCX–2006–16).

[4] *See* Section 902.02 of the NYSE Listed Company Manual and Nasdaq Marketplace Rule IM–4500–4.

[5] *See* Securities Exchange Act Release No. 51004 (January 10, 2005), 70 FR 2917 (January 18, 2005) (SR–NASD–2004–140).

on issuers that transfer from another national securities exchange than on some other issuers. In light of the fact that the Exchange will collect the same level of annual fees and listing of additional shares fees from such issuers, however, the Exchange believes that the difference does not constitute an inequitable allocation of fees. In light of a transferring issuer's prior payment to another market and the generally lower burdens associated with reviewing a transferring issuer's eligibility, the Exchange believes that eliminating initial fees for transferring issuers is entirely consistent with an equitable allocation of listing fees. The Exchange will maintain a rigorous regulatory review process with respect to the initial listing qualification of listing applicants transferring from other markets.

The Exchange does not expect the financial impact of this proposed rule change to be material, either in terms of increased levels of annual fees from transferring issuers or in terms of diminished initial listing fee revenues. Quite simply, even with the proposed rule change in place, the Exchange understands that a change in listing venue is a major step for an issuer, and therefore the Exchange does not expect that the number of issuers that transfer to NYSE Arca in a given time frame will be sufficient to have a material effect on financial resources.

The Exchange will apply the proposed fee waiver retroactively as of the date of initial submission of this rule filing. The Exchange believes that this retroactive effect is necessary and justified because Nasdaq currently operates such a waiver and the Exchange is therefore at a competitive disadvantage vis-à-vis Nasdaq until the Exchange has such a waiver in place. Giving the waiver retroactive effect will therefore have the immediate effect of promoting competition between the Exchange and Nasdaq and alleviating the Exchange's current competitive disadvantage.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. In light of a transferring issuer's prior payment to another market, the Exchange believes that the proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory. The Exchange believes that the fee waiver will increase competition among listing markets and will remove a competitive disadvantage the Exchange currently has vis-à-vis the other national securities exchanges, and it is therefore designed to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–47 and should be submitted on or before August 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15885 Filed 7–11–08; 8:45 am]

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[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58113; File No. SR–NYSEArca–2008–40]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of Shares of the NETS Tokyo Stock Exchange REIT Index Fund

July 7, 2008.

I. Introduction

On May 22, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), 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 list and trade the shares (''Shares'') of the NETS™ Tokyo Stock Exchange REIT Index Fund (''Fund'') issued by the NETS Trust (''Trust''). The proposed rule change was published for comment in the **Federal Register** on June 6, 2008.[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 list and trade the Shares pursuant to NYSE Arca Equities Rule 5.2(j)(3), the Exchange's listing standards for Investment Company Units (''ICUs'').[4] The Fund seeks to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of publicly-traded securities in the aggregate in the Japanese market, as represented by the Tokyo Stock Exchange REIT Index (''Index''). The Index is a market capitalization weighted index consisting of stocks of all of the real estate investment trusts traded primarily on the Tokyo Stock Exchange. Detailed descriptions of the Fund, the Index, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement [5] or on the Fund's Web site (*http://www.netsetfs.com*), as applicable.

This proposed rule change is required because the Index does not meet all of the ''generic'' listing requirements of Commentary .01(a)(B) to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of ICUs based on international or global indexes. The Index meets all such requirements except for those set forth in Commentary .01(a)(B)(2). Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares; for the period of October 2007 up to and including March 2008, component stocks that in the aggregate accounted for at least 90% of the weight of the Index had a minimum worldwide monthly trading volume of 2,918 shares.

The Exchange represents that: (1) Except for Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A–3 under the Act [6] for the initial and continued listing of the Shares. In addition, the Exchange represents that the Shares will comply with all other requirements applicable to ICUs including, but not limited to, requirements relating to the dissemination of key information such as the Index value and Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, and Information Bulletin to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of ICUs.[7]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act [8] and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, 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.

Although the Index does not meet the generic listing requirement that component stocks accounting in the aggregate for at least 90% of the weight of the index have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares, the Commission believes that the proposed rule change should not significantly affect the protection of investors or the public interest or impose any significant burden on competition. Commentary .01(a)(B) was designed to, in conjunction with other listing requirements, ensure that ICUs listed on the Exchange are sufficiently broad-based in scope to be not readily susceptible to manipulation.[11] In approving these standards, the Commission believed that, taken together, they are reasonably designed to ensure that securities with substantial market capitalization and trading volume account for a substantial portion of any underlying index or portfolio that, when applied in conjunction with the other applicable listing requirements, would permit the listing and trading only of products that are sufficiently broad-based in scope to minimize potential manipulation.[12] In this case, the Commission believes that the global notional volume traded (number of shares traded multiplied by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57906 (June 2, 2008), 73 FR 32377.

[4] ICUs are securities that represent interests in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). *See* NYSE Arca Equities Rule 5.2(j)(3).

[5] *See* the Trust's Registration Statement on Form N–1A, dated February 13, 2008 (File Nos. 333–147077 and 811–22140) (''Registration Statement'').

[6] 17 CFR 240.10A–3.

[7] *See, e.g.*, Securities Exchange Act Release Nos. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca–2006–86) (approving generic listing standards for ICUs based on international or global indexes); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (approving generic listing standards for ICUs and Portfolio Depositary Receipts); and 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (approving rules for the listing and trading of ICUs). *See also* e-mail from Michael Cavalier, Associate General Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated June 2, 2008.

[8] 15 U.S.C. 78f.

[9] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571, 19574 (April 18, 2007) (SR–NYSEArca–2006–86) (order approving generic listing standards for ICUs based on global or international indexes).

[12] *Id.* at 19576.

price of security) of Index components indicates that the Shares should not be readily susceptible to manipulation: for the period of October 2007 up to and including March 2008, component stocks that in the aggregate accounted for 93.42% of the weight of the Index each had global notional volume traded per month of at least $25,000,000, averaged over the last six months. In addition, the Commission notes the Exchange's representation that the Shares satisfy all of the other generic listing standards under NYSE Arca Equities Rule 5.2(j)(3), which includes: (1) Commentary .01(a)(B)(1), which establishes a minimum market value of index component stocks that in the aggregate account for at least 90% of the weight of the underlying index; (2) Commentary .01(a)(B)(3), which prohibits (a) the most heavily weighted component stock from exceeding 25% of the weight of the underlying index, and (b) the five most heavily weighted component stocks from exceeding 60% of the weight of the underlying index; and (3) Commentary .01(a)(B)(4), which establishes (in certain circumstances) a minimum number of component stocks for an underlying index.

The Commission notes that the Exchange represented that the Shares will be subject to all of its continued listing standards applicable to ICUs and all other requirements applicable to ICUs, and that the Trust is required to comply with Rule 10A–3 under the Act.[13] The Commission also notes that it has previously approved the listing and trading of derivative securities products based on indexes that were composed of stocks that did not meet certain quantitative generic listing criteria, including Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3).[14]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NYSEArca–2008–40) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15888 Filed 7–11–08; 8:45 am]

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[13] *See* 17 CFR 240.10A–3.

[14] *See, e.g.*, Securities Exchange Act Release No. 56695 (October 24, 2007), 72 FR 61413 (October 30, 2007) (SR–NYSEArca–2007–111).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58121; File No. PCAOB–2008–03]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Changes Regarding Ethics and Independence Rule 3526, Communication With Audit Committees Concerning Independence, Amendment to Interim Independence Standards, and Amendment to Rule 3523, Tax Services for Persons in Financial Reporting Oversight Roles

July 9, 2008.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Act''), notice is hereby given that on April 24, 2008, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') the proposed rule changes described in Items I, II, and III below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rule Change

On April 22, 2008, the Board adopted Ethics and Independence Rule 3526, *Communication with Audit Committees Concerning Independence,* an amendment to the Board's Interim Independence Standards, and an amendment to Rule 3523, *Tax Services for Persons in Financial Reporting Oversight Roles.* The proposed rule change text is set out below. Language deleted by the amendment to Rule 3523 is in brackets. Language that is added by the amendment to Rule 3523 is italicized.

Rules of the Board

* * * * *

Section 3. Professional Standards

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Part 5—Ethics

* * * * *

Subpart I—Independence

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Rule 3523. Tax Services for Persons in Financial Reporting Oversight Roles

A registered public accounting firm is not independent of its audit client if the firm, or any affiliate of the firm, during the [audit and] professional engagement period provides any tax service to a person in a financial reporting oversight role at the audit client, or an immediate family member of such person, unless—

(a) The person is in a financial reporting oversight role at the audit client only because he or she serves as a member of the board of directors or similar management or governing body of the audit client;

(b) The person is in a financial reporting oversight role at the audit client only because of the person's relationship to an affiliate of the entity being audited—

(1) Whose financial statements are not material to the consolidated financial statements of the entity being audited; or

(2) Whose financial statements are audited by an auditor other than the firm or an associated person of the firm; or

(c) The person was not in a financial reporting oversight role at the audit client before a hiring, promotion, or other change in employment event and the tax services are—

(1) Provided pursuant to an engagement in process before the hiring, promotion, or other change in employment event; and

(2) Completed on or before 180 days after the hiring or promotion event.

Note: In an engagement for an audit client whose financial statements for the first time will be required to be audited pursuant to the standards of the PCAOB, the provision of tax services to a person covered by Rule 3523 before the earlier of the date that the firm: (1) Signed an initial engagement letter or other agreement to perform an audit pursuant to the standards of the PCAOB, or (2) began procedures to do so, does not impair a registered public accounting firm's independence under Rule 3523.

* * * * *

Rule 3526. Communication With Audit Committees Concerning Independence

A registered public accounting firm must—

(a) Prior to accepting an initial engagement pursuant to the standards of the PCAOB—

(1) Describe, in writing, to the audit committee of the issuer, all relationships between the registered public accounting firm or any affiliates of the firm and the potential audit client or persons in financial reporting oversight roles at the potential audit client that, as of the date of the communication, may reasonably be thought to bear on independence;

(2) Discuss with the audit committee of the issuer the potential effects of the relationships described in subsection (a)(1) on the independence of the registered public accounting firm,

should it be appointed the issuer's auditor; and

(3) Document the substance of its discussion with the audit committee of the issuer.

(b) At least annually with respect to each of its issuer audit clients —

(1) Describe, in writing, to the audit committee of the issuer, all relationships between the registered public accounting firm or any affiliates of the firm and the audit client or persons in financial reporting oversight roles at the audit client that, as of the date of the communication, may reasonably be thought to bear on independence;

(2) Discuss with the audit committee of the issuer the potential effects of the relationships described in subsection (b)(1) on the independence of the registered public accounting firm;

(3) Affirm to the audit committee of the issuer, in writing, that, as of the date of the communication, the registered public accounting firm is independent in compliance with Rule 3520; and

(4) Document the substance of its discussion with the audit committee of the issuer.

Amendment to PCAOB Interim Independence Standards

Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees* (''ISB Standard No. 1''), ISB Interpretation 00–1, *The Applicability of ISB Standard No. 1 When ''Secondary Auditors'' Are Involved in the Audit of a Registrant,* and ISB Interpretation 00–2, *The Applicability of ISB Standard No. 1 When ''Secondary Auditors'' Are Involved in the Audit of a Registrant, An Amendment of Interpretation 00–1,* are superseded by Rule 3526.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Section 103(a) of the Act directs the Board, by rule, to establish ''ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by th[e] Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.'' Moreover, Section 103(b) of the Act directs the Board to establish such rules on auditor independence ''as may be necessary or appropriate in the public interest or for the protection of investors, to implement, or as authorized under, Title II of th[e] Act.''

The Board adopted Rule 3526, *Communication with Audit Committees Concerning Independence,* because it believed that the accounting firm should discuss with the audit committee before accepting an initial engagement pursuant to the standards of the PCAOB any relationships the accounting firm has with the issuer that may reasonably be thought to bear on its independence. The rule is intended to build on the communication requirements in *Independence Standards Board Standard No. 1, Independence Discussions with Audit Committees* (''ISB No. 1'') and provide the audit committee with information—including information about the firm's relationships with persons in financial reporting oversight roles (''FROR'') at the company—that may be important to its determination about whether to hire the firm as the company's auditor. The rule also requires a registered firm on at least an annual basis after becoming the issuer's auditor to make a similar communication and also affirm to the audit committee of the issuer, in writing, that the firm is independent. The Board intends for these communications to provide the audit committee with sufficient information to understand how a particular relationship might affect independence and to foster a robust discussion between the firm and the audit committee. The rule also includes a new requirement for the firm to document the substance of its discussion with the audit committee.

The Board adopted amendments to Rule 3523, *Tax Services for Persons in Financial Reporting Oversight Roles,* to exclude the portion of the audit period that precedes the beginning of the professional engagement period. The Board believes that it is not necessary for the rule to restrict the provision of tax services during the portion of the audit period that precedes the professional engagement period. The Board also added a note to Rule 3523 that states that in an engagement for an audit client whose financial statements for the first time will be required to be audited pursuant to the standards of the PCAOB, the provision of tax services to persons covered by Rule 3523 before the earlier of the date that the firm (1) signed an initial engagement letter or other agreement to perform an audit pursuant to the standards of the PCAOB or (2) began procedures to do so, does not impair a registered public accounting firm's independence under Rule 3523.

The proposed rule changes also amend the PCAOB interim independence standards because Rule 3526 will supersede the Board's interim independence requirement, ISB No. 1, and two related interpretations.

(b) Statutory Basis

The statutory basis for the proposed rule is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes would apply equally to all registered public accounting firms.

C. Board's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board released the proposed rules for public comment in PCAOB Release No. 2007–008 (July 24, 2007). The Board received 16 written comments. A copy of PCAOB Release No. 2007–008 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's Web site at www.pcaobus.org. The Board has carefully considered all comments it has received. In response to the written comments received, the Board has clarified and modified certain aspects of the proposed rule change, as discussed below.

Rule 3526. Communication With Audit Committees Concerning Independence

Under Section 301 of the Act, ''[t]he audit committee of each issuer, in its capacity as a committee of the board of directors, shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer * * * for the purpose of preparing or issuing an audit report or related work * * *.'' [1] PCAOB interim

[1] The SEC has implemented this provision by adopting rules directing the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that

Continued

independence standards require the auditor to provide certain information to the audit committee about independence that could assist the audit committee in fulfilling these oversight responsibilities. Specifically, ISB No. 1 requires, among other things, firms to disclose at least annually to the audit committee all relationships between the auditor and its related entities and the company and its related entities that, in the auditor's professional judgment, may reasonably be thought to bear on the auditor's independence. ISB No. 1 does not, however, require the firm to provide information to the audit committee about the firm's independence in connection with becoming the issuer's auditor (*i.e., before* the person or firm becomes the issuer's auditor).

As discussed in the proposing release, the Board proposed Rule 3526 because it believed that the accounting firm should discuss with the audit committee before accepting an initial engagement pursuant to the standards of the PCAOB any relationships the accounting firm has with the issuer that may reasonably be thought to bear on its independence. The proposed rule was intended to build on the communication requirements in ISB No. 1 and provide the audit committee with information—including information about the firm's relationships with persons in FRORs at the company—that may be important to its determination about whether to hire the firm as the company's auditor. The Board also proposed to include in the rule a new requirement for the firm to document the substance of its discussion with the audit committee.

All commenters were generally in favor of the Board adopting the proposed rule, and, as discussed more fully below, some recommended modifications. Commenters stated that Rule 3526 would assist audit committees in fulfilling their responsibilities and would aid them in their decision-making process. After carefully considering the comments, the Board is adopting Rule 3526 with one modification, as described below. If approved by the SEC, Rule 3526 will supersede ISB No. 1 and two related interpretations.[2]

Scope of the Required Communication

The Board proposed in Rule 3526(a) to require the registered firm, prior to accepting an initial engagement pursuant to the standards of the PCAOB, to describe in writing to the audit committee[3] all relationships between the accounting firm or any affiliates of the firm[4] and the potential audit client or persons in FRORs at the potential audit client that may reasonably be thought to bear on independence. The Board also proposed to require the firm to discuss with the audit committee the potential effects of those relationships on the firm's independence. In Rule 3526(b), the Board proposed to require a registered firm on at least an annual basis after becoming the issuer's auditor to provide the same information described above and also affirm to the audit committee of the issuer, in writing, that the firm is independent in compliance with Rule 3520, *Auditor Independence*.[5] As described in the proposing release, the Board intended for these communications to provide the audit committee with sufficient information to understand how a particular relationship might affect independence and to foster a robust discussion between the firm and the audit committee.

Commenters generally believed that the scope of the required communications was appropriate. Several commenters noted that, to a large extent, firms are already making the kinds of communications that would be required by proposed Rule 3526. One commenter acknowledged, however, that existing communications between the firm and a potential new audit client do not include the disclosure of tax services to a person in a FROR or his or her immediate family member. Additionally, some registered firms noted that communications regarding the auditor's independence currently vary in content and timing and may, in some instances, occur only orally.

Most commenters did not believe that it was necessary for the Board to expand the scope of the required communication to include any additional matters. One commenter, however, recommended requiring the firm to confirm its independence in writing to the audit committee prior to accepting an initial engagement. Another commenter recommended revising Rule 3526(a) to require the firm to make the communications in its initial proposal to the company's audit committee.

As discussed above, the Board proposed to require firms to affirm their independence annually but did not propose a similar requirement that would apply before the firm is initially engaged as the company's auditor. Rule 3526(a) requires registered firms to make certain communications about relationships that may reasonably be thought to bear on independence before accepting an initial engagement pursuant to the standards of the PCAOB. Rather than prescribing a particular time before that point when the communications must occur, however, the rule allows registered firms and audit committees the flexibility to make that determination. The Board understands that, in some cases, firms need time before a new engagement

is not in compliance with the audit committee requirements mandated by the Act.

[2] ISB Interpretation 00–1, *The Applicability of ISB Standard No. 1 When ''Secondary Auditors'' Are Involved in the Audit of a Registrant,* and ISB Interpretation 00–2, *The Applicability of ISB Standard No. 1 When ''Secondary Auditors'' Are Involved in the Audit of a Registrant, An Amendment of Interpretation 00–1.* The interpretations state that the responsibility to comply with ISB No. 1 rests solely with the primary auditor, but that the primary auditor should include in its report to the audit committee all of its relationships and those of its domestic and foreign associated firms that could reasonably bear on the independence of the primary auditor. Under these interpretations, if the primary auditor is relying on the work of secondary auditors not associated with the primary auditor's firm, the report of the primary auditor should either describe any such secondary auditors' relationships, or it should state that it does not do so. The treatment of secondary auditors under Rule 3526 will be similar to the treatment of secondary auditors under ISB No. 1 and the two interpretations. Secondary auditors will not need to comply with Rule 3526, but the primary auditor will need to disclose to the audit committee any relationships of the firm's affiliates that could reasonably be thought to bear on the independence of the primary auditor. As under ISB No. 1 and the related interpretations, the scope of any communications about secondary auditors under Rule 3526 should be clear to the audit committee. Accordingly, the Board expects the primary auditor's report to either include any covered relationships of any secondary auditors not affiliated with the firm or state that it does not do so. One commenter recommended that the Board consider providing an exemption for secondary auditors. Because the rule does not require communications by secondary auditors, an exemption is not necessary.

[3] One commenter recommended the Board provide guidance in situations in which an issuer does not have an audit committee. Under Section 2(a)(3) of the Act, ''[t]he term 'audit committee' means—(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and (B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.'' Accordingly, under Rule 3526, if an audit client does not have an audit committee, the auditor would be required to make the communications to the entire board of directors.

Additionally, one commenter recommended that audit committees provide better disclosure, through the proxy, when approving non-audit services performed by the auditor. The commenter stated that providing this type of transparency will permit investors a greater ability to evaluate audit committee's fiduciary performance of shareholders. The Board does not have statutory authority to require disclosure by audit committees.

[4] One commenter recommended that the Board adopt a definition of affiliate of the firm. This term is already defined in Rule 3501.

[5] Rule 3520 states that a registered public accounting firm and its associated persons must be independent of the firm's audit client throughout the audit and professional engagement period.

begins to resolve any matters that could impair their independence. If a firm were required to affirm its independence prior to accepting a new engagement, it would need to wait until it has resolved any independence issues to make the required communications. These communications are intended to assist the audit committee in fulfilling its responsibility to hire the auditor—their usefulness for that purpose may diminish if they are left until immediately before the engagement begins. Accordingly, the Board does not believe a requirement for auditors to affirm that they are independent before accepting a new engagement is appropriate.

Other commenters recommended certain exclusions from the scope of the required communications. For example, one commenter asserted that the auditor cannot be expected to know about all relationships that may reasonably be thought to bear on its independence, and recommended that the written communication to the audit committee state that the auditor's assessment is based on information provided to the auditor by the issuer. The Board does not believe that allowing auditors to include such a limitation in the communication would be appropriate. Complying with the Board's independence requirements is the responsibility of the auditor.[6] To fulfill this responsibility, as well as their related responsibility under the SEC's independence rules, auditors need to ascertain what relationships with the issuer and persons in FRORs at the issuer may reasonably be thought to bear on their independence. Moreover, some of the information the auditor must assess in order to assure its independence and that may need to be communicated under Rule 3526—such as the firm's or its associated persons' financial interests in the audit client—can be more readily obtained by the auditor than its audit client.

Another commenter recommended that the Board exclude tax services to a person in a FROR from the required communications because the commenter believed that compliance with Rule 3523, as amended, should adequately address any independence concerns regarding such services. As discussed in the proposing release, Rule 3526 is intended to require disclosure of not only whether the firm provided any specifically prohibited services or maintained any specifically prohibited relationships, but also whether any of the firm's relationships or services may reasonably be thought to bear on independence under the SEC's general standard of auditor independence[7] and AU sec. 220, *Independence*.[8] Because auditors will need to consider the relevant facts and circumstances in order to make such a determination, the Board does not believe that per se exemptions are appropriate.

Some commenters suggested that, in certain circumstances, firms would be restricted in the information they could provide to the audit committee about relationships with persons in FRORs due to legal limitations imposed by confidentiality and privacy laws. Specifically, one commenter was concerned that the auditor would not be able to disclose to the audit committee information about tax services rendered to a person in a FROR prior to obtaining a consent from that person. Another commenter recommended that the Board address the need for obtaining such a consent in its final release, while another recommended that the Board provide an exemption in circumstances where applicable legal restrictions impede an auditor's ability to comply fully with the disclosure requirement.

Under ISB No. 1, auditors have been required to disclose to the audit committee relationships with the company and its related entities and to discuss the auditor's independence with the audit committee. Accordingly, the required communications could include discussion of tax or other services provided to an entity or person other than the company itself. The Board understands that firms are subject to certain confidentiality requirements in the tax context[9] and that other restrictions could arise outside of that context, depending on the facts and circumstances that a particular relationship presents. The Board is not, however, aware that firms have encountered difficulty in communicating with audit committees, as required by ISB No. 1 or any other professional practice standard, as a result of such privacy requirements.

As described above, Rule 3526 is a general requirement that, like ISB No. 1, requires disclosure of certain relationships that may be relevant to the audit committee's oversight of the engagement. It does not set forth a list of relationships that must always be disclosed or mandate specific information that must be communicated when disclosure is required. Rather, Rule 3526 allows firms significant flexibility to determine how to comply with the requirements to describe a covered relationship and discuss the potential effects of that relationship on the firm's independence. Accordingly, while the Board will monitor the application of the rule in this regard, it does not believe that the recommended exception is necessary or appropriate at this time.

The Board also received several comments on its proposal not to include the words ''in the auditor's professional judgment'' in the rule's description of the scope of the required communications. ISB No. 1 requires disclosure of certain relationships that ''in the auditor's professional judgment may reasonably be thought to bear on independence.'' In the proposing release, the Board explained that it believed that omitting the reference to the auditor's professional judgment would clarify the requirement by reminding auditors of the need to focus on the perceptions of reasonable third parties when making independence determinations.

[6] Another commenter suggested that the audit committee should be able to rely on the firm to determine and resolve any independence issues, and that a requirement for the auditor to discuss these matters with the audit committee would increase the responsibilities of the audit committee with respect to independence. This commenter recommended that the Board not adopt these requirements. As discussed above, the rule is intended to provide audit committees with information to assist them in carrying out their responsibilities to oversee the audit engagement, but auditors remain responsible for complying with the independence requirements. Nothing in the rule adds to, or otherwise modifies, the responsibilities of the audit committee.

[7] 17 CFR 210.2–01(b). Under that standard, an accountant is not independent if ''the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement.'' In considering this general standard, the SEC ''looks in the first instance to whether a relationship or the provision of service: Creates a mutual or conflicting interest between the accountant and the audit client; places the accountant in the position of auditing his or her own work; results in the accountant acting as management or an employee of the audit client; or places the accountant in a position of being an advocate for the audit client.'' 17 CFR 210.2–01, preliminary note.

[8] AU sec. 220, *Independence,* requires that ''[i]n all matters relating to the assignment, an independence in mental attitude is to be maintained by the auditor * * *'' AU sec. 220 notes that ''[i]t is of utmost importance to the profession that the general public maintain confidence in the independence of independent auditors'' and that public confidence in the auditor's independence ''would be impaired by evidence that independence was actually lacking, and it might also be impaired by the existence of circumstances which reasonable people might believe likely to influence independence.''

[9] *See* 26 U.S.C. 7216; 26 CFR 301.7216–3 (prohibiting disclosure or use of tax return information without written consent of taxpayer that meets specified requirements); 26 CFR 301.7216–1 (defining ''tax return information'' to mean ''any information, including, but not limited to a taxpayer's name, address, or identifying number, which is furnished in any form or manner for, or in connection with, the preparation of a tax return of the taxpayer'').

Some commenters supported the proposed exclusion of the words ''in the auditor's professional judgment'' from Rule 3526. Other commenters, however, believed that the absence of the reference to judgment could confuse, rather than clarify, the requirement and noted that it is reasonable and appropriate for audit committees to rely on the accounting firm's judgment as to what matters should be disclosed. One of these commenters contended that this aspect of the Board's proposal is inconsistent with the Board's recent focus on the importance of the use of auditor judgment. Conversely, one commenter did not object to the absence of a reference to judgment, provided that the adopting release contain an acknowledgement that the auditor must apply judgment in determining which matters are required to be communicated to the audit committee.[10]

As the Board explained in the proposing release, auditors will need to apply judgment to determine whether a relationship may reasonably be thought to bear on independence. After considering commenters' views, the Board continues to believe that adding specific reference to the auditor's professional judgment is unnecessary and inappropriate in this instance. While the Board agrees that auditors must exercise sound judgment in carrying out their responsibilities, it does not believe that specific reference to judgment in this rule is necessary to encourage auditors to do so. Judgment is called for in applying any reasonableness standard to particular facts and circumstances, and Rule 3526 is no different. Determining what relationships may reasonably be thought to bear on independence requires consideration of how a third party—not the auditor—would view the relationship, which is consistent with the SEC's general standard of auditor independence and AU sec. 220. A reference to ''in the auditor's professional judgment'' could suggest otherwise, however, and therefore could discourage the necessary analysis. Accordingly, the Board has determined not to add the phrase to Rule 3526.

Time Period Covered by Rule 3526(a)

In the proposing release, the Board solicited comment on whether the initial communication in Rule 3526(a) should be limited to relationships that existed during a particular period, and, if so, how long that period should be. Commenters provided a wide variety of recommendations in this area. Some commenters stated that the initial communication should not be limited to relationships that existed during a particular period. Some of these commenters noted that establishing a specific period could result in arbitrary exclusion of certain relationships and recommended that the audit committee and auditor be responsible for determining the relevant time frame.

Other commenters recommended that the time period be limited to the audit and professional engagement period because, according to these commenters, the relevant relationships are those that exist currently or will continue to exist. One of these commenters stated that requiring communication of relationships that existed prior to this period would cause an unnecessary burden on the firm to identify and communicate these matters and on the audit committee to consider such information, because the firm was not subject to the auditor independence rules with respect to the audit client before the beginning of the audit and professional engagement period. One commenter recommended that the required time period should, at a minimum, be the audit period and that the rule should require auditors to consider communicating relationships that existed before that time. Finally, one commenter recommended that the time period should be no longer than two years prior to the commencement of the audit period, and two commenters recommended that the proposed rule should cover a time period of at least three years.

After considering these comments, the Board has determined that the initial communication required by Rule 3526(a) should not be limited to relationships that existed during a particular time period. While the Board agrees that a relationship that existed during the audit and professional engagement period may be more likely to bear on independence than a relationship that ended substantially before that time, it does not believe that the passage of time is the only factor relevant to a determination of whether a relationship may reasonably be thought to bear on independence. The nature of the relationship must also be considered. For example, if the firm customized and implemented the company's financial reporting system, that relationship, depending on the circumstances, might reasonably be thought to bear on independence even if the engagement to design the system was concluded before the beginning of the audit and professional engagement period. Determining whether a particular relationship is covered by Rule 3526(a) will, therefore, depend on the relevant facts and circumstances.

The Board is making one modification to the rule in response to a comment recommending that Rule 3526 make clear that the relationships required to be disclosed are those that may reasonably be thought to bear on independence as of the date of the communication. Because the relevant relationships are those that continue to bear on independence at the time of the communication, the Board has modified the rule by adding the words ''as of the date of the communication'' where appropriate. This clarification should help firms distinguish relationships that are covered by the rule from those that are not.

This modification should also clarify that, if a relationship may reasonably be thought to bear on independence as of the date of the communication, it must be disclosed regardless of whether it was disclosed in a prior year. Some commenters suggested that auditors should not be required to repeat a previously made disclosure. The Board believes that an earlier disclosure may reduce the amount of information that needs to be disclosed, but it does not obviate the need for disclosure altogether. If the nature of the relationship and the potential effects of the relationship on independence remain substantially unchanged, a reference to the earlier disclosure will generally be sufficient when disclosure is required. Moreover, as discussed above, after some amount of time, the length of which depends on the nature of the relationship, a relationship may no longer reasonably be thought to bear on independence and, therefore, would no longer need to be disclosed.

Timing of the Communications

As discussed above, the Board proposed Rule 3526(a) because it believed that auditors should communicate relevant information about independence before becoming the issuer's auditor. A few commenters expressed concern that the proposed rule could cause undue burden on private companies pursuing an initial public offering if the communication were required before the auditor accepts an engagement to assist an existing private company client in going public. According to commenters, a requirement to complete the independence assessment before the auditor could commence work related to

[10] Additionally, one commenter recommended including the reference to judgment and also referring to the SEC's general standard of auditor independence and the preliminary note to the SEC's independence rules in the proposed rule or the adopting release. Footnote 9 of the Board's adopting release refers to the general standard and the preliminary note.

the initial public offering might disadvantage the audit client by causing delay. One commenter stated that auditors generally begin work on the initial public offering based upon an initial review of relationships between the accounting firm and the company and complete their independence assessment before the company's registration statement is filed. This commenter suggested that the Board reconsider the required timing of the communications in the context of an initial public offering.

After considering these comments, the Board has determined that relieving a firm whose private company audit client is pursuing an initial public offering from compliance with Rule 3526 is not necessary or appropriate. As discussed above, the rule is intended to provide audit committees with the information they need to effectively oversee the audit engagement. When a private company undertakes an initial public offering, it must, for the first time, have its financial statements audited by an auditor that is independent within the meaning of the rules of the SEC and PCAOB. Among other decisions an audit committee must make is whether to engage its existing auditor for the initial public offering or whether to retain a new auditor for that purpose. In this context, the Board believes that the communication about an existing auditor's independence—which is relevant to the existing auditor's ability to continue as the company's auditor through, and after, the initial public offering—should not be delayed until just before the registration statement is filed. Moreover, the Board believes that this evaluation will not cause an unnecessary burden because the private company is already a client of the accounting firm and therefore should already be aware of most of the relationships that would need to be communicated.

The Board also received comment on the timing of the annual communication requirement that the Board proposed in Rule 3526(b). Like ISB No. 1, proposed Rule 3526 did not specify when during the year the firm would be required to make the annual communication.[11] One commenter recommended that the Board specify in Rule 3526(b) when the annual communication should take place to make sure that these critical discussions do not take place at the end of the audit engagement. The commenter recommended that the proposed rule be changed to state that firms should apply Rule 3526 as early in the audit process as practicable, preferably during the planning stage of the audit. One commenter recommended that the communication occur before substantial planning procedures commence, while another recommended that the annual communication should take place at the time the engagement letter is signed and then again near the end of the audit. Finally, one commenter recommended adding a section to Rule 3526 requiring an auditor to update the communications when he or she becomes aware of a covered, previously unknown or new relationship.

After considering these comments, the Board does not believe it is appropriate to mandate specifically when the Rule 3526(b) annual communication takes place. In most cases, the communications will be more useful if they take place near the beginning of the audit process. However, by not prescribing the timing of the communication, Rule 3526(b) will allow the auditor and audit committee to determine the timing that is most appropriate in the circumstances of the particular engagement. Similarly, the Board does not believe that it is necessary for the rule to explicitly address how a firm should correct an incomplete communication.

Rule 3523. Tax Services for Persons in Financial Reporting Oversight Roles

Amendment to Rule 3523 To Exclude the Portion of the Audit Period That Precedes the Professional Engagement Period

Rule 3523, as adopted by the Board, prohibits a registered public accounting firm, or an affiliate of the firm, from providing tax services during the ''audit and professional engagement period'' to a person in, or an immediate family member of a person in, a FROR at the audit client. Consistent with the SEC's independence rules,[12] the phrase ''audit and professional engagement period'' is defined to include two discrete periods of time. The ''audit period'' is the period covered by any financial statements being audited or reviewed.[13] The ''professional engagement period'' is the period beginning when the firm either signs the initial engagement letter or begins audit procedures, whichever is earlier, and ends when either the company or the firm notifies the SEC that the company is no longer that firm's audit client.[14]

In circumstances in which a registered firm has been the auditor for an audit client for more than a year, the ''audit period'' is a subset of the ''professional engagement period.'' However, when a registered firm accepts a new audit client, the audit period may cover a period of time before the commencement of the professional engagement period. In such circumstances, Rule 3523, as adopted, provides that the firm is not independent of its audit client if the firm, or an affiliate of the firm, provided tax services to a person covered by Rule 3523 during the audit period but before the beginning of the professional engagement period. This aspect of the rule therefore effectively prevents a firm from accepting a new audit client if the firm, or an affiliate of the firm, provided tax services to such a person during the period covered by any financial statements to be audited or reviewed.

In preparing for implementation of the Board's tax services and independence rules, the Board decided to revisit the application of Rule 3523 to tax services provided during the audit period. As discussed above, on April 3, 2007, the Board issued a concept release to solicit comment about the possible effects on a firm's independence of providing tax services to a person covered by Rule 3523 during the portion of the audit period that precedes the beginning of the professional engagement period, and other practical consequences of applying the restrictions imposed by Rule 3523 to that portion of the audit period. After careful consideration of comments received in response to the concept release, the Board, on July 24, 2007, proposed to amend the rule to exclude the portion of the audit period that precedes the beginning of the professional engagement period.[15]

The Board received 13 comments on the proposed amendment to Rule 3523. Almost all of the commenters supported the Board's recommendation to amend Rule 3523.[16] Many of these commenters

[11] The Board understands that, under ISB No. 1, the communication typically occurs at the end of the audit when the financial statements are issued.

[12] 17 CFR 210.2–01(f)(5).

[13] Rule 3501(a)(iii)(1).

[14] Rule 3501(a)(iii)(2).

[15] *See* PCAOB Release No. 2007–008, which includes a discussion of the comments the Board received on the concept release.

[16] Only one commenter on the proposed rule objected to the amendment of Rule 3523. This commenter's objection stemmed from the contention that the terms ''professional engagement period'' and ''a person in a financial reporting role'' were not defined. Definitions for ''professional engagement period'' and ''financial reporting oversight role'' are provided under Rules 3501(a)(iii)(2) and 3501(f)(i), respectively. The same commenter, while not specifically addressing the proposed amendment, also expressed concern with Rule 3523(a), which provides an exception for tax services to a person who is in a FROR only because he or she serves as a member of the Board of

Continued

reiterated their belief that the firm's independence would not be affected by the provision of tax services to a person in a FROR during the portion of the audit period that precedes the beginning of the professional engagement period. Commenters also reaffirmed their belief that, if Rule 3523 is not amended, it could adversely affect companies' ability to change auditors by limiting the companies' choice of auditors.

The Board has carefully considered these comments, as well as the comments on the concept release,[17] and determined to adopt the amendment to Rule 3523. The Board continues to believe that it is not necessary for the rule to restrict the provision of tax services during the portion of the audit period that precedes the professional engagement period. Rule 3523 relates to services provided to individuals and not the audit client that issues the financial statements subject to audit. Additionally, registered firms would remain responsible for considering the relevant facts and circumstances of a specific tax engagement and determining whether their independence is impaired under the SEC's general standard of auditor independence.[18]

One commenter objected to the discussion in the proposing release (and included here in the paragraph above) describing the firm's obligation to consider whether the firm's independence is impaired under the SEC's general standard of auditor independence. This commenter stated that the discussion sends a contradictory message by calling for firms to assess whether their independence is impaired despite the Board's conclusion that restrictions are unnecessary to preserve independence. The Board disagrees. As a result of the Board's amendment, firms will not be specifically prohibited by Rule 3523 from providing tax services to persons in a FROR during the portion of the audit period that precedes the professional engagement period. That does not mean, however, that such services are categorically permitted. Rather, as discussed in the proposing release, the amendment reflects the Board's belief that a more tailored approach, based on facts and circumstances and measured against the general standard of auditor independence, is preferable to a *per se* prohibition. Accordingly, as with any other service or relationship that is not specifically prohibited by the independence rules, firms must determine whether the service or relationship impairs independence under the SEC's general standard of auditor independence.

Application of Rule 3523 to New Issuers

The Board proposed adding a note to Rule 3523 concerning the application of Rule 3523 in the context of an initial public offering in light of comments received on the concept release. The proposed note stated that, in the context of an initial public offering, the provision of tax services to a person covered by Rule 3523 before the earlier of the date that a registered firm: (1) Signed an initial engagement letter or other agreement to perform an audit pursuant to the standards of the PCAOB, or (2) began procedures to do so, does not impair a firm's independence under Rule 3523. Commenters generally recommended that the Board adopt the note and encouraged the Board to consider expanding it to include other corporate life events, noting that corporate life events other than an initial public offering may also result in the need for an audit client's financial statements to be audited pursuant to the standards of the PCAOB for the first time.[19]

In response to these comments, the Board determined to revise the note to Rule 3523 to describe events, other than just initial public offerings, pursuant to which a company's financial statements must be audited in accordance with the standards of the PCAOB for the first time. Specifically, the Board replaced the words ''[i]n the context of an initial public offering'' with ''[i]n an engagement for an audit client whose financial statements for the first time will be required to be audited pursuant to the standards of the PCAOB.'' This situation may occur when a company decides to conduct an initial public offering of its securities,[20] which would require the company to file, for the first time, a registration statement under the Securities Act of 1933. Additionally, this situation may occur when a foreign private issuer decides to list its securities on a national securities exchange, which would require the company to register its securities, for the first time, under the Securities Exchange Act of 1934. In both cases, the company's audited financial statements would be required, for the first time, to be audited pursuant to the standards of the PCAOB.[21]

The Board does not believe it is appropriate to list in the note the various corporate life events identified by commenters, such as mergers or acquisitions, reverse mergers or other similar transactions. The relevant factor is not the name given to a transaction or event but whether the transaction or event triggers the initial requirement for an audit pursuant to the standards of the PCAOB. For example, the surviving company in a merger or acquisition transaction may be an issuer that is already filing with the SEC financial statements required to be audited pursuant to the standards of the PCAOB. The Board did not intend the note to Rule 3523 to describe such a scenario.[22] By focusing on the need for a first-time audit pursuant to the standards of the PCAOB, the company and its auditors are better able to determine whether a

Directors, and, referring to the responsibilities of directors, recommended deleting this section in its entirety. This commenter also recommended that the Board eliminate Rule 3523(b), which provides an exception, under certain circumstances, for tax services to a person who is in a FROR only because of the person's relationship to an affiliate of the entity being audited. The Board does not believe that eliminating these exceptions is warranted.

[17] In response to the concept release, two commenters stated that Rule 3523 should not be amended to exclude the portion of the audit period that precedes the professional engagement period. These commenters believed that providing tax services to a person in a FROR during the audit period impairs independence, and suggested that audit firms may plan for a change of auditors sufficiently in advance to avoid or minimize any problems resulting from the application of the rule to the audit period.

[18] 17 CFR 210.2–01(b); *see* footnote 7.

[19] Commenters suggested the following as examples of when an audit client's financial statements would, for the first time, need to be audited pursuant to the standards of the PCAOB—mergers, reverse mergers in which a privately-held entity merges with a public company and succeeds to the public company's reporting obligations under the Securities Exchange Act of 1934, issuance of publicly traded debt, issuance of partnership or other units, inclusion of a public company's securities in an employee benefit plan, decision by a foreign private issuer to list its securities in the United States, and companies that have greater than 500 U.S. shareholders and total assets exceeding $10 million as of the latest fiscal year-end.

[20] The company may offer equity securities, debt securities, limited partnership interests, trust interests, or another type of securities in the initial public offering.

[21] The Board intends the note to Rule 3523 to describe all circumstances in which a company that was not an ''issuer,'' as defined by the Act, becomes an issuer as a result of a corporate life event or otherwise. These circumstances include those in which a private company that was once an issuer becomes an issuer again. As long as the company was not required to have its financial statements audited pursuant to the standards of the PCAOB prior to being required to do so, the Board will consider the requirement to be a ''first-time'' requirement for purposes of the note.

[22] Another example is a private operating company becoming a reporting company through a reverse merger with a reporting shell company. In this scenario, even though the operating company assumes the reporting obligations of the former shell company, the surviving reporting company is the former shell company whose financial statements already were required to be audited pursuant to the standards of the PCAOB. Therefore, the note to Rule 3523 does not describe this situation.

proposed transaction or corporate life event is described by the note.

One commenter stated that, while it is easy to identify the date on which the initial engagement letter to perform an audit pursuant to the standards of the PCAOB is signed, it would be very difficult to apply the second prong of the note, which requires identification of the date that the auditor began procedures to perform an audit pursuant to the standards of the PCAOB, especially if the registered firm audited the company's prior years' financial statements.[23] Another commenter similarly questioned whether this period begins when the auditor begins planning for the audit. The Board recognizes that, in certain circumstances, it may be difficult to identify when a continuing auditor began procedures pursuant to the standards of the PCAOB. An auditor begins procedures for purposes of Rule 3523 when he or she begins procedures, including required audit planning procedures, to update its earlier audits to conform them to the standards of the PCAOB or begins procedures on a new audit pursuant to those standards. This point in time will depend on the facts and circumstances of the particular engagement and corporate life event, rather than on any more specific triggering event that the Board could establish by rule.

Transition Periods

Rule 3523 prohibits the provision of tax services to covered persons once the professional engagement period begins. Some commenters on the concept release recommended that the Board amend Rule 3523 to allow a transition period after a company changes auditors so that the new auditor may complete any tax services in progress to any persons in FRORs affected by the issuer's change of auditors.[24] Other commenters stated that tax services to persons in FRORs should, as is currently required, cease before the professional engagement period begins. The Board decided to seek further feedback on this topic in the proposing release. Specifically, the Board asked commenters to specify why they believed any transition period was necessary and how long any such transition period should be.[25]

The majority of commenters on this topic recommended that the Board provide for a 180-day transition period to allow an accounting firm to complete covered tax services once the professional engagement period begins. Most of these commenters stated that, since the Board has previously determined that a 180-day transition is appropriate when a person is hired or promoted into a FROR,[26] the Board should provide the same transition when an issuer changes its auditor. The commenters stated that, without a transition period, the person in a FROR could experience undue hardship because he or she may have to switch tax preparers in the middle of the personal tax services engagement. Additionally, some commenters stated that some accounting firms may not be able to terminate the in-process personal tax services engagements within a timeframe that would also allow them to submit their proposal for the new audit engagement. Conversely, some commenters stated that they believed that the Board should not provide a transition period and that it is appropriate for the firm to cease the personal tax services before the professional engagement period begins or that a transition period should only be available on a case-by-case basis where cessation of services would cause significant hardship.[27]

After considering these comments, the Board does not believe that a transition period is necessary when a company changes its auditor and has determined not to amend Rule 3523 to include one. The Board adopted Rule 3523 because the provision of tax services to a person in a FROR after the accounting firm is hired as the auditor creates an unacceptable appearance that the firm lacks independence. While the Board believed a time-limited exception was warranted to accommodate persons who, through a hiring or promotion event, abruptly become covered by the rule, it does not believe that such a transition period is similarly necessary after an auditor change. In the former situation, the firm already is the issuer's auditor and has no control over whether or when the person is promoted or otherwise moved into a FROR. In contrast, the firm controls whether and when it begins a new engagement. The Board therefore believes that the firm is able to conclude, or transition to another provider, any tax services to persons in FRORs at a new audit client before beginning the engagement.[28]

Some commenters also encouraged the Board to consider providing a transition period for firms to complete tax services to persons who become covered by Rule 3523 as a result of a corporate life event, such as a merger, acquisition, or initial public offering. Commenters suggested that such corporate life events present conceptually similar transition issues to those related to the hiring or promotion of a person into a FROR and that Rule 3523(c) should therefore be expanded to accommodate them. Commenters also stated that the absence of transitional relief may cause unnecessary hardship for persons in FRORs whose tax return preparation work was well underway at the point of the initial public offering, merger, or acquisition.[29]

As discussed above, in the context of an initial public offering, the rule, as amended, makes clear that tax services provided to a person in a FROR do not impair independence as long as those tax services are concluded before the earlier of the date that the firm: (1) Signed an initial engagement letter or other agreement to perform an audit pursuant to the standards of the PCAOB, or (2) began procedures to do so. Auditors should have sufficient time before that date to conclude any tax services to persons that would be covered by the rule. Accordingly, the Board does not believe that the recommended transition period is

[23] The commenter noted that, when a company undertakes an initial public offering, it is required to include in the registration statement audited financial statements for its past three completed fiscal years. These financial statements may have previously been audited pursuant to generally accepted auditing standards (''GAAS''). The commenter was concerned that if the company does not retain a new auditor for its initial public offering, there may be a question as to whether the auditor should consider its audits of the prior years in assessing when it ''began procedures'' as provided under the note to Rule 3523. An auditor should not consider work already performed on previously completed GAAS audits for determining when the auditor ''began procedures'' because those audits were not performed pursuant to the standards of the PCAOB.

[24] Rule 3523(c) provides a time-limited transition period for an auditor to complete in-progress tax services to a person that becomes a FROR at the audit client through a hiring, promotion, or other change in employment event. That transition period is unaffected by the proposed rules changes.

[25] *See* PCAOB Release 2007–008 (July 24, 2007), at 12.

[26] *See* Rule 3523(c).

[27] Another commenter stated that Rule 3523 should be effective immediately for issuers with fiscal years ending on or after December 15, 2007, that all personal tax services in process should be allowed to continue until the filing of the applicable tax return, and that such services, along with the related fees, should be disclosed in the issuer's filings with the SEC and documented in the minutes of meetings of the audit committee.

[28] Nothing in Rule 3523 requires a firm to complete or terminate tax services to persons in FRORs at a potential audit client before submitting a proposal for a new audit engagement. Rather, the rule requires the accounting firm to complete or terminate those services by the beginning of the professional engagement period.

[29] The commenters further stated that, because persons in FRORs may receive tax services from a number of accounting firms, the application of the rule to the audit period may unreasonably restrict a company's ability to either continue or change auditors after a corporate life event. As discussed above, the Board has amended the rule to exclude the portion of the audit period that precedes the professional engagement period.

necessary in the context of an initial public offering.

The Board also considered whether a transition period is necessary to allow a firm to conclude tax services to persons who become covered by the rule after a merger or acquisition. As discussed above, Rule 3523(c) already provides a transition period for a firm to conclude tax services to a person who was not in a FROR before a hiring, promotion, or other change in employment event. If a business combination results in a change of employer for a person in a FROR—from, for example, the acquired company to the acquiring company—the existing transition period in Rule 3523 would apply.[30] For example, if Company A acquires Company B, a person who was in a FROR at Company B would experience an ''other change in employment event'' if he or she became an employee of Company A in a FROR as a result of the acquisition. If such a person had been receiving tax services from Company A's registered public accounting firm pursuant to an engagement in process before the acquisition, the time-limited exception in Rule 3523(c) would apply.[31]

In the example above, persons in FRORs at Company A would not experience a change in employment event because they were employed by Company A both before and after the acquisition, and Rule 3523(c) would, therefore, not apply. If Company B's auditor became Company A's auditor after the acquisition (replacing Company A's auditor), Company B's auditor would have to conclude any tax services to persons in FRORs (and their immediate family members) at Company A before the start of the professional engagement period. The Board believes this is appropriate because, as discussed above, the Board does not believe that a transition period is necessary to allow a newly engaged auditor to conclude in-progress tax services to persons in FRORs at the new audit client. Accordingly, the Board has determined not to expand the existing transition period in Rule 3523(c).

Effective Date

Rule 3526 establishes new requirements for registered public accounting firms. The Board believes it is appropriate to allow a reasonable period of time for such firms to prepare internal policies and procedures and train their employees to ensure compliance with these new requirements. Accordingly, Rule 3526 will become effective, and ISB No. 1 and the related interpretations superseded, on the later of September 30, 2008, or 30 days after the date that the SEC approves the rule.

The amendment to Rule 3523 would have the effect of making permanent the Board's delay in implementing the rule as it applies to tax services provided during the period subject to audit but before the professional engagement period. Accordingly, no transition period is necessary, and the amended rule will become effective immediately upon approval by the SEC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents, the Commission will:

(a) By order approve such proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the requirements of Title I of the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/pcaob.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number PCAOB 2008–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number PCAOB 2008–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/pcaob/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the PCAOB. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number PCAOB–2008–03 and should be submitted on or before August 4, 2008.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15928 Filed 7–11–08; 8:45 am]

BILLING CODE 8010–01–P

[30] *See* also *Staff Questions and Answers, Ethics and Independence Rules Concerning Independence, Tax Services and Contingent Fees* (April 3, 2007), Question and Answer No. 6, at 4–5.

[31] *Id.*

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11308]

Illinois Disaster Number IL–00016

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Illinois (FEMA–1771–DR), dated 06/24/2008.

Incident: Severe Storms and Flooding.

Incident Period: 06/01/2008 and continuing.

Effective Date: 07/03/2008.

Physical Loan Application Deadline Date: 08/25/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster

declaration for Private Non-Profit organizations in the State of Illinois, dated 06/24/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Douglas, Edgar, Jersey, Winnebago.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–15970 Filed 7–11–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11306 and #11307]

Illinois Disaster Number IL–00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1771–DR), dated 06/25/2008.

Incident: Severe Storms, and Flooding.

Incident Period: 06/01/2008 and continuing.

Effective Date: 07/03/2008.

Physical Loan Application Deadline Date: 08/25/2008.

EIDL Loan Application Deadline Date: 03/23/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Illinois, dated 06/25/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Calhoun, Jersey, Rock Island, Whiteside.

Contiguous Counties: (Economic Injury Loans Only):

Illinois: Bureau, Carroll, Greene, Lee, Macoupin, Madison.

Iowa: Clinton, Muscatine, Scott.

Missouri: Lincoln, Pike, Saint Charles.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–15979 Filed 7–11–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11264 and #11265]

Iowa Disaster Number IA–00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 7.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1763–DR), dated 05/27/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 05/25/2008 and continuing.

Effective Date: 07/07/2008.

Physical Loan Application Deadline Date: 07/28/2008.

EIDL Loan Application Deadline Date: 02/27/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Iowa, dated 05/27/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Clinton, Decatur, Dubuque, Greene, Keokuk, Pottawattamie, Van Buren, Washington.

Contiguous Counties: (*Economic Injury Loans Only*):

Illinois: Carroll, Jo Daviess, Whiteside.

Missouri: Harrison, Mercer.

Nebraska: Douglas.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–15983 Filed 7–11–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11272]

Iowa Disaster Number IA–00016

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA–1763–DR), dated 05/27/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 05/25/2008 and continuing.

Effective Date: 06/27/2008.

Physical Loan Application Deadline Date: 07/28/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Iowa, dated 05/27/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Cerro Gordo, Crawford, Dallas, Dubuque, Floyd, Davis, Des Moines, Henry, Lee, Lyon, Muscatine, Palo Alto, Harrison, Marion, Story, Tama, Union.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–15990 Filed 7–11–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11255]

Kentucky Disaster Number KY–00016

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for

the Commonwealth of Kentucky (FEMA–1757–DR), dated 05/19/2008.

Incident: Severe Storms, Tornadoes, Flooding, Mudslides, and Landslides.

Incident Period: 04/03/2008 through 04/04/2008.

Effective Date: 07/01/2008.

Physical Loan Application Deadline Date: 07/18/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Kentucky, dated 05/19/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Ballard, Hickman.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–15967 Filed 7–11–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11310]

Minnesota Disaster Number MN–00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA–1772–DR), dated 06/25/2008.

Incident: Severe Storms and Flooding.

Incident Period: 06/07/2008 through 06/12/2008.

Effective Date: 06/12/2008.

Physical Loan Application Deadline Date: 08/25/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Minnesota, dated 06/25/2008, is hereby amended to establish the incident period for this disaster as beginning 06/07/2008 and continuing through 06/12/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–15992 Filed 7–11–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11318 and #11319]

Missouri Disaster #MO–00027

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Missouri dated 07/03/2008.

Incident: Severe Storms and Tornadoes.

Incident Period: 05/01/2008 through 05/03/2008.

Effective Date: 07/03/2008.

Physical Loan Application Deadline Date: 09/02/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 04/03/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Clay.

Contiguous Counties:

Missouri: Clinton, Jackson, Platte, Ray.

Kansas: Wyandotte.

The Interest Rates are:

	Percent
Homeowners with credit available elsewhere	5.375
Homeowners without credit available elsewhere	2.687
Businesses with credit available elsewhere	8.000
Businesses & small agricultural cooperatives without credit available elsewhere	4.000
Other (Including non-profit organizations) with credit available elsewhere	5.250
Businesses and non-profit organizations without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 11318 C and for economic injury is 11319 0.

The States which received an EIDL Declaration Number are Missouri, Kansas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: July 3, 2008.

Jovita Carranza,

Acting Administrator.

[FR Doc. E8–15968 Filed 7–11–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11299]

Nebraska Disaster Number NE–00021

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA–1770–DR), dated 06/20/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 05/22/2008 through 06/24/2008.

Effective Date: 07/03/2008.

Physical Loan Application Deadline Date: 08/19/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster

declaration for Private Non-Profit organizations in the State of Nebraska, dated 06/20/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Cherry, Dundy, Greeley, Johnson, Morrill, Nemaha, Valley.

All other information in the original declaration remains unchanged.

Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–15973 Filed 7–11–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11297 and #11298]

Nebraska Disaster Number NE–00020

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1770–DR), dated 06/20/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 05/22/2008 through 06/24/2008.

Effective Date: 07/03/2008.

Physical Loan Application Deadline Date: 08/19/2008.

EIDL Loan Application Deadline Date: 03/20/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Nebraska, dated 06/20/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Custer, Lancaster.

Contiguous Counties: (Economic Injury Loans Only):

Nebraska: Blaine, Garfield, Logan, Loup, Valley

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–15985 Filed 7–11–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11320]

Wisconsin Disaster # WI–00014

AGENCY: U.S. Small Business Administration.

ACTION: Notice

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Wisconsin (FEMA–1768–DR), dated 06/14/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 06/05/2008 and continuing.

Effective Date: 06/14/2008.

Physical Loan Application Deadline Date: 08/13/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/14/2008, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Adams, Columbia, Crawford, Dane, Dodge, Grant, Iowa, Lafayette, Milwaukee, Monroe, Richland, Sauk, Vernon, Winnebago.

The Interest Rates are:

	Percent
Other (Including non-profit organizations) with credit available elsewhere	5.250
Businesses and non-profit organizations without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 11320.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–15965 Filed 7–11–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6287]

Culturally Significant Objects Imported for Exhibition Determinations: ''Projects 88: Lucy McKenzie''

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 ''Projects 88: Lucy McKenzie'', 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 Museum of Modern Art, New York, NY, from on or about September 10, 2008, until on or about December 1, 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: July 7, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–16005 Filed 7–11–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6288]

Culturally Significant Objects Imported for Exhibition; Determinations: ''The Dead Sea Scrolls''

ACTION: Notice, Correction.

SUMMARY: On June 20, 2008, notice was published on page 35189 of the **Federal Register** (volume 73, number 120) of determinations made by the Department of State pertaining to the exhibit, ''The Dead Sea Scrolls.'' The referenced notice is corrected as to an additional object to be included in the exhibition. 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 additional object to be included in the exhibition ''The Dead Sea Scrolls'', imported from abroad for temporary exhibition within the United States, is of cultural significance. The additional object is imported pursuant to a loan agreement with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit object at The Jewish Museum, New York, New York, from on or about September 21, 2008, until on or about January 4, 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 Wolodymyr Sulzynsky, 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: July 7, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–16004 Filed 7–11–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary; Federal Aviation Administration

[Docket No. FAA–2008–0036]

RIN 2120–AF90

Policy Regarding Airport Rates and Charges

AGENCY: Department of Transportation, Office of the Secretary and Federal Aviation Administration.

ACTION: Notice of amendment to policy statement.

SUMMARY: This action amends the Department of Transportation (''Department'') ''Policy Regarding the Establishment of Airport Rates and Charges'' published in the **Federal Register** on June 21, 1996 (''1996 Rates and Charges Policy''). This action adopts three amendments to the 1996 Rates and Charges Policy (two modifications and one clarification). These amendments are intended to provide greater flexibility to operators of congested airports to use landing fees to provide incentives to air carriers to use the airport at less congested times or to use alternate airports to meet regional air service needs. Any charges imposed on international operations must also comply with the international obligations of the United States.

DATES: This policy statement is effective July 14, 2008.

ADDRESSES: *Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Charles Erhard, Manager, Airport Compliance Division, AAS–400, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3187; facsimile: (202) 267–5769; e-mail: *charles.erhard@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Documents

You can get an electronic copy of this notice and all other documents in this docket using the Internet by:

(1) Searching the Federal eRulemaking portal *(http://www.regulations.gov/search);*

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this proceeding.

Authority for This Proceeding

This notice is published under the authority described in Subtitle VII, Part B, Chapter 471, section 47129 of Title 49 United States Code. Under subsection (b) of this section, the Secretary of Transportation is required to publish policy statements establishing standards or guidelines the Secretary will use in determining the reasonableness of airport fees charged to airlines under section 47129.

Background

On January 17, 2008, the Department of Transportation published a notice in the **Federal Register** proposing to amend the Department of Transportation (''Department'') ''Policy Regarding the Establishment of Airport Rates and Charges'' published in the **Federal Register** on June 21, 1996, (''1996 Rates and Charges Policy'' or ''1996 Policy''). (73 FR 3310, January 17, 2008). The comment period on the notice was extended to April 3, 2008. (73 FR 7626, February 8, 2008). The notice proposed three amendments to the 1996 Policy (technically two modifications and one clarification). These amendments were intended to provide greater flexibility to operators of congested airports to use landing fees to provide incentives to air carriers to use the airport at less congested times or to use alternate airports to meet regional air service needs. The notice noted that any charges imposed on international operations must also comply with the international obligations of the United States.

Specifically, the notice first proposed to clarify the 1996 Policy by explicitly acknowledging that airport operators are authorized to establish a two-part landing fee structure consisting of both an operation charge and a weight-based charge, in lieu of the standard weight-based charge. Such a two-part fee would serve as an incentive for carriers to use larger aircraft and increase the number of passengers served with the same or fewer operations. Second, the notice proposed to expand the ability of the operator of a congested airport to include in the airfield fees of a congested airport a portion of the

airfield costs of other, underutilized airports owned and operated by the same proprietor. Third, the notice proposed to permit the operator of a congested airport to charge users of a congested airport a portion of the cost of airfield projects under construction. Under the existing policy, costs of new or reconstructed airfield facilities could be included in airfield charges only when the new or reconstructed facilities are completed and in use, unless carriers at the airport agree otherwise. This notice proposed two alternatives for charges for projects under construction. The first would permit the costs to be included in the rate base only during periods when the airport experiences congestion. At some airports, such as Chicago O'Hare or New York LaGuardia, this could occur throughout the normal operating day. The second would permit these costs to be included in the rate base of the congested airport at all times of the day. Because the latter two proposed amendments would apply only at congested airports, the notice proposed to add a definition of ''congested airport'' in the Applicability section of the 1996 Policy based upon 49 U.S.C. 47175(2).

Legal Requirements for Airport Rates and Charges

All commercial service airports operating in the United States and most other airports that are open to the public have accepted grants for airport development under the Airport Improvement Program, authorized in Title 49 of the United States Code, Subtitle VII, Part B, Chapter 471. Under § 47107, in exchange for receiving grant funds, airport operators must give a variety of assurances regarding the operation of their airports and the implementation of grant funded projects. Among other things, airport operators pledge to make the airport ''available for public use on reasonable conditions and without unjust discrimination.'' 49 U.S.C. 47107(a)(1). This obligation encompasses the obligation to establish reasonable and not unjustly discriminatory fees and charges for aeronautical use of the airfield. The Department's rules of practice and procedure for enforcement proceedings involving Federally assisted airports are set forth in 14 CFR Part 16.

Section 47129 authorizes the Department to review the reasonableness of airport fees charged to air carriers, upon a complaint or request for determination and a finding of a significant dispute, and directs the publication of policies or guidelines for determining reasonable fees and development of expedited hearing procedures to resolve airport fee disputes. The Department's procedures applicable to a proceeding concerning airport fees are contained in Subpart F, Title 14 CFR 302.601–302.609.

The Policy Regarding Airport Rates and Charges

The Department published the 1996 Rates and Charges Policy in the **Federal Register** at 61 FR 31994 on June 21, 1996. The statement of policy was required by section 113 of the Federal Aviation Administration Authorization Act of 1994, Public Law 103–305 (August 23, 1994), now codified at 49 U.S.C. 47129. The publication of the 1996 Rates and Charges Policy followed publication of a notice of proposed policy (59 FR 29874, June 9, 1994). That proposal predated enactment of section 47129. After enactment of section 47129, the Department published a supplemental notice of proposed policy (59 FR 51836, October 12, 1994); an Interim Policy (60 FR 6906, February 3, 1995); and a further supplemental notice of proposed policy (60 FR 47012, September 8, 1995).

The Air Transport Association of America (ATA), on behalf of its member airlines, and the City of Los Angeles, operator of Los Angeles International Airport, both challenged elements of the 1996 Rates and Charges Policy in the United States Court of Appeals for the District of Columbia. The court vacated portions of the 1996 Rates and Charges Policy in *Air Transport Ass'n of America* v. *DOT,* 119 F.3d 38, amended by 129 F.3d 625 (D.C. Cir. 1997).

The 1996 Rates and Charges Policy specified that, unless otherwise agreed to by an airport user, fees for airfield use must be based on costs calculated using the historic cost accounting (HCA) methodology. However, under paragraphs 2.2, 2.4, and 2.5.1, for other airport facilities and services the airport proprietor was free to use any reasonable methodology to determine fees, if justified and applied on a consistent basis. 1996 Rates and Charges Policy, para. 2.6. Petitioners in the court case challenged the disparate treatment of airfield fees and other fees. The court determined that this distinction had not been adequately justified. *Air Transport*, 119 F.3d at 44. At the Department's request, the Court vacated only the specific provisions of the 1996 Rates and Charges Policy that petitioners challenged as implementing that distinction. *Air Transport,* 129 F.3d at 625.

Since the court's ruling, the Department has addressed significant airport-airline fee disputes through case-by-case adjudication. The Department's decisions are informed by the statutory limitations imposed on airport fees. One limitation derives from requirements of the Airport Improvement Program (AIP) grant assurances, 49 U.S.C. 47107. In particular, a federally assisted airport sponsor must give the Secretary of Transportation and the Federal Aviation Administration (FAA) certain assurances, including the assurance that the airport will be available for public use on fair and reasonable terms and without unjust discrimination. The other limitation arises from the proprietor's exception to the Anti-Head Tax Act, 49 U.S.C. 40116, which allows the airport proprietor to collect only reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities.

Our past cases have established some guidelines for our analysis of fees challenged by airlines. Our cases have examined fees and fee methodologies that we considered reasonable as well as those we considered not to be reasonable. See *Miami International Airport Rates Proceeding,* Order 97–3–26 (March 19, 1997), *aff'd sub nom., Air Canada* v. *DOT,* 148 F.3d 1142 (D.C. Cir. 1998); *Alaska Airlines, Inc., et al.* v. *Los Angeles World Airports,* Order 2007–6–8 (June 15, 2007) (LAX III), on appeal to the United States Court of Appeals for the District of Columbia Circuit).

Additionally, we have established some guidance on unreasonable airline fees. *Second Los Angeles Int'l Airport Rates Proceeding,* Order 95–9–24 (Sept. 22, 1995, (LAX II), *aff'd sub nom, City of Los Angeles* v. *DOT,* 165 F.3d 972 (D.C. Cir. 1999); *Brendan Airways, LLC* v. *Port Authority of New York and New Jersey,* Order 2005–6–11 (June 14, 2005), *aff'd in part, Port. Auth. of New York and New Jersey* v. *DOT,* 479 F.3d 21 (D.C. Cir. 2007).

The Secretary has also determined whether or not certain disputed fees were unjustly discriminatory. *Brendan Airways,* op cit., Order 2005–6–11; LAX III.

Rationale for the Proposal

The January 17 notice offered a two-part justification for the proposed policy changes: First, the increasing congestion and operating delays at major airports in the U.S., and second, the potential that peak period pricing has to address that congestion. Excess demand has already resulted in congestion at certain airports to the point that the FAA has taken action to limit access. These airports include LaGuardia, JFK International, O'Hare International, and Newark Liberty International. A recent study,

Capacity Needs in the National Airspace System 2007–2025: An Analysis of Airports and Metropolitan Area Demand and Operational Capacity in the Future, conducted by the Federal Aviation Administration as part of the Future Airport Capacity Task (FACT) 2, indicates metropolitan areas and regions along the East and West Coasts are experiencing large amounts of growth in population and economic activity that cause chronic congestion. Based on studies and analyses associated with FACT 2, conditions are projected to worsen in the future in these coastal regions, primarily concentrated at Operational Evolution Partnership (OEP) airports. Fourteen of the 35 OEP airports and eight metropolitan areas are forecasted to be capacity-constrained in 2025. Of the fourteen airports identified as capacity-constrained in the study, several are further constrained by conditions, either physical (New York LaGuardia) or environmental (Long Beach-Daugherty Field), that prevent additional runway capacity from being built.

The January 17 notice noted that one way of addressing congestion of an airport's airside facilities is by the pricing of those facilities. By raising the cost of operating a flight during congested periods, an airport owner/operator can increase the efficient utilization of the airport in a number of ways. First, by charging higher landing fees during periods of peak congestion, the airport proprietor gives aircraft operators the incentive to reschedule their flights to less congested periods or to use secondary airports. The degree to which aircraft operators reschedule will in large part depend on their network structure and access to secondary airports. Second, if airports structure their airfield charges to reflect scarcity by combining per-operation charges with weight-based charges, they will provide an incentive for air carriers to use congested airfield facilities more efficiently by increasing the size of aircraft operating during periods of congestion. Third, even where expansion is not feasible, the industry and users benefit if adjustment of prices during congested periods increases the efficiency with which congested airfield facilities are used.

The January 17 notice made clear that the proposed actions did not represent true congestion pricing because they did not authorize airport proprietors to set fees to balance demand with capacity without regard to allowable costs of airfield facilities and services. However, enabling proprietors at congested airports to assign additional, but still appropriate, costs to the airfield could encourage more efficient use of these airports. Airport sponsors would still need to assure that the airport is available to the public on reasonable terms and without unjust discrimination and that fees charged for international operations comply with the international obligations of the United States.

Comments on the Proposals, FAA Docket 2008–0036

The Department received more than 70 substantive comments on the proposals, from U.S. and foreign air carriers, foreign governments and airport operators, U.S. airport operators, general aviation aircraft operators, local government agencies, trade and nonprofit associations, private citizens, an aircraft manufacturer, and a university.

The comments covered a broad range of subjects, but tended to fall within five general issue areas:

1. Legal authority to adopt the proposed policies.
2. Adequacy of the guidance contained in the notice.
3. Effectiveness of the proposals to achieve the stated goals.
4. Whether the proposed policies are unjustly discriminatory toward particular categories of operators and particular markets.
5. Whether the notice properly acknowledged the discretionary authority of airport operators to set rates.

This summary of comments reflects the major issues raised and does not restate each comment received. The Department considered all comments received even if not specifically identified and responded to here.

1. Legal Authority

Several airlines argued that the proposed policy is preempted by the Airline Deregulation Act's preemption provision, which prohibits States or localities from regulating airline rates, routes, or services. They contended that airports are thereby preempted from pricing airfield access in order to modify airline conduct and that the Department accordingly lacks the authority to permit an airport to price landing areas to affect airline behavior. They disputed the premise that the ''proprietor's exception'' to the preemption provision allowed an airport to take congestion into account in formulating its charges. They also argued that the Anti-Head Tax Act constrains an airport's ability to implement market-based congestion pricing or slot auctions.

Comment: The proposals are in essence congestion pricing, and neither the Department nor airport operators are authorized to use congestion pricing in establishing airfield charges. Many of the carrier comments equated the proposals to market-based congestion pricing. One association submitted a legal opinion concluding that neither the Department nor airports have the authority to impose such congestion pricing.

Response: The notice made clear that the purpose of the proposed policies was to provide an airport operator with greater flexibility to allocate new categories of cost to peak hour landing fees, thereby providing an additional means to address peak hour congestion. The financing of airfield projects under construction and inclusion of airfield costs of secondary airports would use new and non-traditional cost allocations to achieve some of the effects of congestion pricing. The proposals allow an airport proprietor to assign certain costs to airfield charges, but not to charge fees that exceed those costs. Thus, the proposals represent pricing based upon costs of providing facilities and services rather than use of market-clearing rates to set prices. Although the intent of applying those costs to peak hours at a congested airport is to encourage changes in airline scheduling or use of larger aircraft, the fees utilized are cost-based, and therefore are not congestion pricing.

Comment: Even if cost-based, the proposals depart from established ratemaking in two general ways: charging carriers for facilities they are not using, because the facilities are at another airport or are not yet built; and charging fees higher than direct costs for the express purpose of achieving the airport operator's goals relating to airline scheduling and fleet mix. Some commenters argued that the assignment of future costs or the costs of another airport to carriers at a congested airport goes beyond the established principles of cost-based ratemaking, and the Department cannot, therefore, consider the proposals to reflect cost recovery.

Response: The proposed policies depart from past practice only in expanding the ability of an airport proprietor to rate-base certain costs in the landing fee and to expressly permit congested airports to include a greater portion of those costs in landing fees during congested periods. The result is not additional revenue to the airport, because fees remain limited to actual, aggregate costs. Clearly, the Department has the authority to amend its policy on airport-airline fee reasonableness. The Supreme Court has recognized that the

Secretary of Transportation is responsible for administering the aviation laws and in *County of Kent,* made clear that the Department could adopt policies that would change the rules under which the court was deciding that case. *Northwest Airlines* v. *County of Kent,* 510 U.S. 355, 366–367 (1994):

The Secretary of Transportation is charged with administering the federal aviation laws, including the AHTA. His Department is equipped, as courts are not, to survey the field nationwide, and to regulate based on a full view of the relevant facts and circumstances. If we had the benefit of the Secretary's reasoned decision concerning the AHTA's permission for the charges in question, we would accord that decision substantial deference. See *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 842–845, 104 S. Ct. 2778, 2781–2783, 81 L. Ed.2d 694 (1984).

The Supreme Court has also called the Department of Transportation the ''superintending agency'' for purposes of applying the Airline Deregulation Act's preemption provision over state and municipal regulation of airline rates, routes and services. *American Airlines, Inc.* v. *Wolens,* 513 U.S. 219, 229, fn.6 (1995).

Lower courts have recognized the superintending role of the Secretary of Transportation in administering the Anti-Head Tax Act, particularly with respect to fees imposed by airports on airlines. See, *Port Authority of New York and New Jersey* v. *U.S. Department of Transportation,* 479 F.3d 21, 27 (D.C. Cir., 2007); *Southwest Air Ambulance, Inc.* v. *City of Las Cruces* 268 F.3d 1162, 1170 (10th Cir. 2001); *City of Los Angeles* v. *U.S. Dept. of Transp.,* 165 F.3d 972, 978 (D.C. Cir. 1999); *Air Canada* v. *U.S. Dept. of Transp.,* 148 F.3d 1142, 1150–1151; (D.C. Cir. 1998); and *New England Legal Foundation* v. *Massachusetts Port Authority,* 883 F.2d 157, 172 (1st Cir. 1989).

Commenters also argued that the *purpose* of the proposed charges—which they identify as approximating the effect of congestion pricing at congested airports—was beyond the proprietary authority of airport operators. This is based on judicial opinions— e.g., *Massport*—holding that local governments may charge fees to defray their airport costs but not to regulate air traffic.

The Anti-Head Tax Act gives airport proprietors clear and express authority to charge airline users landing fees and other charges for use of their airport. 49 U.S.C. 40116(e)(2). *County of Kent*, 510 U.S. at 365; *Wardair Canada, Inc.* v. *Florida Department of Revenue*, 477 U.S. 1, 15–16 (1986). The proposals would change the way costs are allocated but would not depart from a system in which the airport operator charged for actual costs.

Under our policy, an airport proprietor may establish peak period landing fees, for the purpose of reducing congestion, provided the fees are properly structured and revenue-neutral. (***Note:*** While the terms ''peak period'' and ''congested hours'' are used interchangeably on an informal basis in this preamble and in responding to comments, the final policy defines and uses only the term ''congested hours.'') The Department has permitted such fees to be charged when they do not exceed the aggregate costs of airfield facilities. The *Massport* case upheld the Department Decision finding that ''while it may be appropriate to raise fees in order to invoke market responses during periods when the airport is congested, to do this during times when there is no shortage of runway capacity penalizes smaller aircraft users when they are not imposing congestion related costs on other users.'' *Investigation into Massport's Landing Fees*, Opinion and Order, FAA Docket 13–88–2 (December 22, 1988). The *Massport* case stands for the proposition that a properly structured peak period pricing system could be found reasonable and not unjustly discriminatory. Reasonable peak period fees would not be preempted under 49 U.S.C. 41713 notwithstanding some impact on air carrier rates, routes or services. Opinion and Order at 11; *New England Legal Foundation* at 165.

The Airline Deregulation Act does not prevent an airport proprietor from charging users for use of the airport facilities and services, including peak-period charges. The Deregulation Act's preemption provision contains a savings clause permitting an airport proprietor to exercise its proprietary powers and rights. An airport may use its proprietary powers in a manner that is reasonable, is nondiscriminatory, is not an undue burden on interstate commerce, and is designed not to conflict with the Airline Deregulation Act and its policies. *Arapahoe County Public Airport Authority* v. *FAA*, 242 F.3d 1213, 1221–1222 (10th Cir. 2001).

The policy defines congested airports and contains other safeguards to assure that these fees fulfill the Department's priorities for alleviating congestion in the national air transportation system. Any fees adopted by an airport pursuant to the Department's Policy would have to be consistent with the goals of that Policy.

Several recent rules and policies issued by the Department show that it has consistently interpreted Federal law to authorize properly structured peak period pricing programs. First, in promulgating regulations to implement the 1990 Airport Noise and Capacity Act (ANCA) (49 U.S.C. 47521, *et seq.*), the Department determined that a peak-period pricing program, where the objective is to align the number of aircraft operations with airport capacity, does not constitute an airport noise or access restriction subject to FAA review and approval. 14 CFR 161.5, definition of ''noise or access restriction.''

Second, the current Policy on Airport Rates and Charges provides that a properly structured peak pricing program that allocates limited resources using price during periods of congestion will not be considered to be unjustly discriminatory. An airport proprietor may, consistent with the policies expressed in the policy statement, establish fees that enhance the efficient utilization of the airport. 61 FR 31994, 32021, § 3 (1996).

The Airline Deregulation Act's preemption provision does not bar airports from taking reasonable, nondiscriminatory measures for a purpose within their proprietary authority merely because those measures would influence airline behavior. Reasonable, not unjustly discriminatory measures taken by an airport operator to align capacity and demand consistent with the Department's policy and in order to alleviate congestion in the national air transportation system are in accordance with Federal policy and are not prohibited because those measures have the purpose and effect of influencing airlines to change aircraft scheduling practices. *See Massport*, 883 F.2d at 165, 173–174.

One commenter cited *San Diego Unified Port District* v. *Gianturco* (651 F.2d 1306, 9th Cir. (1981)); cert. den. 455 U.S. 1000 (1982) for the proposition that an airport's proprietary functions are limited to measures designed to insulate an airport proprietor from liability. We disagree.

Gianturco stands for the proposition that a non-airport proprietor (in that case, the State of California) may not direct an airport proprietor (*i.e.*, the San Diego Unified Port District) to impose a curfew on aircraft flights. The decision acknowledged that because an airport proprietor bears the monetary liability for excessive aircraft noise, it has the proprietary powers to adopt reasonable noise regulations. *Gianturco* did not hold that an airport proprietor's powers were limited to the adoption of noise-

based measures only; similarly, it did not hold that an airport proprietor was limited to adopting measures solely designed to insulate itself from liability.

Airport proprietors of course have powers in addition to noise controls, including setting fees for the use of the airfield. The Anti-Head Tax Act provides that authority. 49 U.S.C. 40116(e)(2). See, *County of Kent*, 510 U.S. 355.

Commenters also claimed that airport-airline charges must relate to the costs imposed and benefits received from the charged carrier, citing *Evansville-Vanderburgh Airport Auth. Dis.* v. *Delta Airlines,* 405 U.S. 707 (1972) and *County of Kent.* This test of reasonableness was based on the Commerce Clause, and the Supreme Court expressly acknowledged that it was within the Department's powers to adopt another test of reasonableness, under the Anti-Head Tax Act. The *Evansville-Vanderburgh* court pointed out that the charges did not conflict with any federal policies on uniform regulation of air transportation, and noted:

> No federal statute or specific congressional action or declaration evidences a congressional purpose to deny or pre-empt state and local power to levy charges designed to help defray the costs of airport construction and maintenance. * * * At least until Congress chooses to enact a nation-wide rule, the power [to have interstate commerce share a fair share of airport costs] will not be denied to the States. 405 U.S. at 721.

The United States Court of Appeals for the District of Columbia Circuit explained, in the *Air Canada* case, that the Department was not obligated to apply a cost-benefit formula for purposes of deciding the reasonableness of Miami International Airport's fee allocation methodology. Referring to the *County of Kent* decision, the DC Circuit stated:

> [T]he Court made clear that it was not establishing a standard for reasonableness under the Anti-Head Tax Act, and that the Secretary could establish another standard, whether more or less stringent than the standard the Court adopted in *Northwest Airlines*, so long as it was a permissible construction of the statute. We need not delve into whether *Northwest Airlines* requires a cost-benefit analysis or any other particular study, nor whether the Department's reasonableness standards are consistent with those applied by the Supreme Court in *Northwest Airlines*, because the Department was not bound to the standards in that case. [fn. omitted] 148 F.3d 1142 at 1151–52.

Comment: The proposals are inconsistent with International Civil Aviation Organization (ICAO) standards for airport pricing and violate standard provisions in bilateral agreements. Every foreign airline that commented on the notice, 34 embassies, the Washington delegation of the European Commission, U.S. carriers and others argued that the proposals were not consistent with ICAO pricing guidelines or provisions in U.S. bilateral agreements (although several foreign carriers expressed a preference for per-operation fees over weight-based fees). Some U.S. carriers assumed the charges could not apply to foreign carriers due to bilateral agreements, and that the charges would, therefore, discriminate against U.S. carriers. One association filed comments refuting the assertion that *ICAO* and bilateral provisions prohibit the proposed charges.

Response: For the reasons discussed in part above under *Legal Authority*, the Department believes the proposed charges can be applied to U.S. and foreign air carriers alike, consistent with ICAO guidance and with U.S. bilateral agreement obligations. First, those documents contain provisions for charges like those proposed, as described below. Second, the United States Government maintains a formal and comprehensive system for regulation of airport charges, including administrative and legal forums in which both foreign and U.S. parties may challenge the reasonableness of any airport charge. *See* 14 CFR part 16 and 49 U.S.C. 47129. The United States Government is fully committed to compliance with its international obligations regarding airport charges, and the final policy, as adopted by this action, includes in its basic statement of principles a clear reminder of the requirement that U.S. airport charges comply with those obligations.

Two-part landing fee. The two-part landing fee will be based on the same long-unchallenged rate base as a weight-based fee, so it is clearly cost-based. Some foreign carriers argued the fee would disproportionately affect foreign carriers by reducing small-aircraft feed traffic in peak hours, but that effect would apply to both U.S. and foreign carriers, and to both international and domestic long-haul flights. Accordingly, we do not find that a two-part landing fee would have a disproportionate effect on foreign carriers.

Moreover, the proposal is consistent with ICAO guidance, which expressly states, ''Landing charges should be based on the weight formula. * * * However, allowance should be made for the use of a fixed charge per aircraft or a combination of a fixed charge with a weight-related element, in certain circumstances, such as at congested airports and during peak periods.'' ICAO's Policies on Charges for Airports and Air Navigation Services, Doc 9082/7 (7th Ed. 2004), ¶; 26 (i). It also is consistent with ICAO guidance on airport charging systems, which provides that charges ''should be determined on the basis of sound accounting principles and may reflect, as required, other economic principles, provided that these are in conformity with Article 15 of the *Convention on International Civil Aviation* and other principles in the present Policies.'' *Id.,* ¶ 23(iii).

Charges for facilities under construction. ICAO guidance expressly allows for pre-funding of airport projects particularly those that are long-term and of a large-scale. ICAO's Policies on Charges for Airports and Air Navigation Services, Doc 9082/7 (7th Ed. 2004), ¶ 24 states:

> * * * notwithstanding the principles of cost-relatedness for charges and of the protection of users from being charged for facilities that do not exist or are not provided * * *, prefunding of projects may be accepted in specific circumstances where this is the most appropriate means of financing long-term, large-scale investment, provided that strict safeguards are in place, including the following:
>
> (i) Effective and transparent economic regulation of user charges and the related provision of services, including performance auditing and ''benchmarking'' (comparison of productivity criteria against other similar enterprises);
>
> (ii) Comprehensive and transparent accounting, with assurances that all aviation user charges are, and will remain, earmarked for civil aviation services or projects;
>
> (iii) Advance, transparent and substantive consultation by providers and, to the greatest extent possible, agreement with users regarding significant projects;
>
> (iv) Application for a limited period of time with users benefiting from lower charges and from smoother transition in changes to charges than would otherwise have been the case once new facilities or infrastructure in place.

The Department believes that charging for the costs of airfield projects under construction as those costs are incurred, exclusively at congested airports for the primary purpose of relieving current congestion, can be a ''most appropriate means of financing long term large scale projects'' because it can address current congestion without increasing total charges to users over time. In fact, financing airfield projects under construction through peak hour charges will ultimately result in lower charges to carriers, by reducing interest costs that would otherwise be capitalized and added to project debt charged to airlines through landing fees after the project is completed.

We note that the proposal adopted by this action to allow recovery of construction costs before a project is in use is not ''pre-funding'' or ''pre-financing,'' as those terms are used in ICAO guidance and elsewhere. The adopted policy does not allow the accumulation of funds before a project begins, to be used later. Rather, the policy requires that costs be incurred for construction before the charges can be assessed, and limits the charges to a reasonable annual amortized amount for the costs actually incurred.

Moreover, the U.S. system of regulation of airport fees, through the grant assurances and 49 U.S.C. 40116, provides the safeguards recommended by ICAO. U.S. obligations under bilateral air services agreements and FAA's AIP program provide the means by which user fees can be regulated and transparent accounting can be assured. As noted in the proposed policy, ''[t]he Department strongly encourages all airports to comply with the obligations * * * to engage in meaningful consultation with carriers * * * to justify their fees and to exchange appropriate financial information to enable carriers to fully evaluate * * * proposed fees.'' The Department also strongly encourages substantive consultations between airports and users. Finally, the provisions in proposed section 2.5.3(a) are consistent with ICAO safeguard (iv), above.

As to the requirement of U.S. air services agreements, the majority of U.S. air services agreements specifically recognize that user charges may reflect but not exceed the full cost to the competent charging authorities of providing the appropriate airport services. (Others simply require that charges be just, reasonable and non-discriminatory.) These provisions do not preclude funding facilities that are still under construction if the charging authority is already incurring costs. We note also that the policy requires that all planning and environmental approvals have been obtained, that financing has been obtained, and that construction has actually commenced, all of which go to assure that the airfield facilities charged for will actually be provided.

Some foreign airlines complained that the provision allowing charges for facilities under construction would permit an airport to build facilities that would not ease congestion, such as terminal facilities. Airfield charges are limited to airfield facilities, however, and this applies to facilities under construction as well as those in use.

Charges for a secondary airport. Bilateral air services agreements recognize that user charges may reflect but not exceed the full cost to the competent charging authorities of providing the appropriate airport services ''at the airport or within the airport system.'' This language clearly indicates that these agreements contemplate charges at one airport for costs at another, as long as the charges are justified and in compliance with the other standards of the agreement, including equitable apportionment.

2. Adequacy of Guidance

Several airline commenters stated that the proposals were too vague to provide useful guidance on implementation, and would simply lead to litigation. Airport commenters that generally supported the proposals asked for additional guidance about how the costs of projects under construction would actually be allowed in current charges, and what airports would be eligible to use the proposed fees.

Comment: Revise the definition of congested airport. Several commenters found the definitions of congested airport and congested hours incomplete or unsatisfactory. A carrier association commented that the definition included many airports that did not have a congestion problem justifying extraordinary pricing increases, and some airports with no congestion at all, such as St. Louis and Pittsburgh. The commenter also questioned the policy of defining airports as congested based on their contribution of one percent or more of the national delay total, on the basis that many factors could contribute to delay other than airfield infrastructure capacity. In contrast, some commenters representing airports argued for an expansion of the definition, to include airports with congestion issues as defined by the airport operator, and airports with local congestion but no role in national system delays at all.

Response: The Department understands why the definition proposed in the January 17 notice was not considered sufficiently precise to identify an appropriate list of airports eligible for the proposed charges. The Department is clarifying here that it interprets 49 U.S.C. 47175(2) to refer to the most recent 2004 Airport Capacity Benchmark Report, which has replaced the 2001 report. The 2004 report includes 35 airports while the 2001 report examined 31. We expect to update section 47175(2) as part of the agency's reauthorization legislation. In response to these comments, particularly given the status of the reauthorization legislation, the Department has revised the definition of congested airports. The final policy adopts a definition that contains two criteria, one relating to existing congestion and the other to future congestion. An airport qualifies as currently congested if it accounts for at least one percent of system delays nationally or is listed in table 1 of the FAA's Airport Capacity Benchmark Report 2004. Whether these criteria are met should be determined using the most recent year for which delay data are available and the most recent Airport Capacity Benchmark Report available. An airport is considered congested in the future if it is forecasted to meet a defined threshold level of congestion in the FACT 2 study or the most recent update of that study. The two criteria produce lists of specific airports, current versions of which have been placed in the public docket. The group of airports produced by the definition is finite, identifiable, and a relatively small portion of the several hundred commercial airports in the U.S. However, the list includes not only airports that are now congested, but airports that have a real expectation of becoming congested in the foreseeable future and would have an interest in planning to prevent a congested condition before it occurs.

We note that two of the fourteen additional airports that qualify as congested based upon the 2004 report do not currently have congested hours. On balance, it is reasonable to adopt the same definition here that Congress used to define congested airports for purposes of environmental streamlining in the Vision 100—Century of Aviation Reauthorization Act. First, the policy amendments, like the environmental streamlining provisions in Vision 100, are intended to help reduce airport congestion and delays. Use of a narrower definition would reduce the utility of this policy in achieving these goals. Second, any viable definition of a congested airport has to reflect the dynamic nature of the aviation industry. This means any definition adopted by the Department should, like 49 U.S.C. 47175(2), consider not only which airports account for the most current delays in any given year, but also which airports are the largest in terms of size and activity level and have historically played a significant role in the national air transportation system. The FAA took these latter factors into account in identifying the 35 airports in the 2004 report. There is no other comparable list. Third, the FAA currently uses this list of airports, known as the operational evolution partnership (OEP) airports, to monitor progress in adding capacity as part of its strategic planning. Finally,

the overall list remains viable in terms of identifying the largest airports that handle the vast majority of operations. The OEP airports include all of the large hub airports, which have 1% or more of the total annual passenger enplanements in the country, and 5 medium hub airports, which have at least .25% but less than 1% of passenger enplanements. All but two of the airports that qualify as congested airports only because they are OEP, Pittsburgh and San Diego, ranked among the 50 busiest in the country in 2006, according to FAA OPSNET data (*http://www.aspm.faa.gov/opsnet/sys/main.asp*). St. Louis and Pittsburgh simply illustrate the point that there is a twofold test for using the new fees. The new fees may not be imposed at an airport that does not have congested hours, even if it is on the list of ''congested airports'' developed by the FAA for planning purposes.

In response to comments, the Department is also adding a definition for congested hours. A congested hour is an hour during which demand approaches or exceeds average runway capacity resulting in volume-related delays. This will typically occur during the most desirable peak hours of operation at a congested airport, although some like LaGuardia Airport experience congestion throughout the operating day.

We continue to believe the threshold of one percent of national delays is a reliable indicator of an airport's ability to accommodate demand. While factors other than the airfield may contribute to performance—an example offered was typical low visibility in morning hours at San Francisco International Airport—those factors can have a direct effect on efficiency and be beyond the ability of the airport proprietor or the FAA to change. Accordingly, it is appropriate to use a performance measure that takes into account all factors that contribute to airfield performance, and the percentage of national delays is a reliable indicator of airfield performance.

The Department is not adopting the recommendation to delegate to airport operators the responsibility to determine whether there is sufficient congestion to justify the proposed charges. Because the policies will increase fees for some users at peak hours, the Department believes they should be applied only where objectively justified as effective in reducing or preventing congestion that would have a significant effect on delays in the national system. The FAA is in the best position to make determinations on this effect, and believes the definition of congested airport for this purpose should remain a responsibility of the Department.

The Department also declines to extend the proposed pricing options to general aviation airports and other commercial airports with little or no national impact. This expansion of the pricing policies would have no effect on the primary issues the Department is trying to address: congestion and delays experienced at peak periods at the most heavily used airports, and the ripple effect of those delays throughout the national system.

Comment: The notice did not make clear or place sufficient limits on the kinds of costs at a secondary airport in the local system that could be included in the rate base at a congested airport.

Response: The Department agrees that the proposed policy will be more useful if it contains more specific guidance about what costs could be included in the proposed peak hour charges. Paragraph 2.4 of the 1996 Rates and Charges Policy listed specific costs that could be charged to the airfield, but that paragraph was vacated by the *Air Transport Association* decision. Clearly only the airfield costs at a secondary airport could be included in landing fees at the congested airport airfield, as a matter of reasonableness in a cost-based system of charges. Within that limitation, the airfield costs that may be recovered in the landing fee at the congested airport would be the same types of costs that are recoverable from operators at the primary airport. Accordingly, as clarification, the final policy adopted notes only that costs of the second airport that may be included in the rate base of the first airport are limited to customary airfield cost center charges for the first airport. If the airfield costs rated-based at the first (congested) airport are reasonable, they are reasonable for the airfield at the secondary airport as well. If carriers had agreed in a lease and use agreement to include other, non-airfield costs in a landing fee, those costs at the secondary airport could not be included in the fee at the primary airport (unless the carriers agree), because they are not costs of the airfield itself.

Comment: The proposed policy lacks guidance on how principal and interest costs of projects under construction could be rate-based in current charges, and how much of the project cost could be included.

Response: First, we would expect airports to conform as closely as possible to current commercial practice in recovering project costs after a project is completed and in use. Typically a project under construction would be financed by interim financing until the project is completed, at which time the total costs would be capitalized and financed through a long-term bond issue. When the project is completed, carriers would be charged the annual debt service over the amortization period of the bonds. For charges imposed on carriers while the project is under construction, the final policy states that the amount of project costs included in charges during the construction period cannot exceed an amount corresponding to debt service calculated in accordance with a commercially reasonable amortization period, which would consider the expected period of the permanent financing and not simply the time required for construction. The policy continues to make clear that project costs paid for during the construction period will be deducted from total costs financed later. We believe this guidance is sufficient to prevent excessive annual charges for project costs during construction.

Comment: It is not clear whether the three proposed charges can be used in combination.

Response: The preamble to the notice noted that the three proposals are not intended to be mutually exclusive. In other words, if the circumstances justify doing so, an airport proprietor might use a combination of two, or even all three, proposals in setting landing fees during periods of congestion.

3. Effectiveness

Many air carriers and carrier associations commented that at least some of the proposals would not have any effect on congestion, but would simply increase costs. Some airports and airport associations, even though supportive of the additional flexibility in addressing peak hour congestion, expressed concern about the effectiveness of the proposals in influencing carrier scheduling in peak hours.

Comment: Charging for facilities under construction and costs of a secondary airport would still not produce landing fees high enough to induce carriers to move flights out of peak hours. The basic comment on effectiveness of two of the proposals—forward financing and support of secondary airports—is that the increased costs of peak period operation would still not be enough to induce carriers to schedule fewer flights in those hours, or to move flights to a secondary airport. As long as the fees must remain revenue-neutral, even with added costs in the peak hours, they cannot be set at an effective market-

clearing rate. Reasons offered in support of this conclusion included:

- There are too many negative consequences for carriers of not maintaining flights at peak hours, including coordination with schedules throughout the system, and marketing considerations of how flights appear in reservation systems;
- Landing fees are only a portion of carrier costs for a flight;
- Carriers have investment in facilities at the airport that must be productively used;
- The costs of higher landing fees at one airport would be absorbed by carriers on a system-wide basis, and would not directly affect the calculation of benefits of the targeted flights at that airport;
- Increased landing fees for carriers have no disincentive effect on passengers, who are the actual drivers of demand for service in peak hours;
- Even if fees are passed on directly to passengers, those passengers are still likely to absorb the additional cost for the convenience of traveling at desired times.

Response: Other commenters argued that the increased fees did not have to have an effect on all operators or flights to be effective. Rather, a decision by carriers to cancel or reschedule just a few marginally profitable operations would be sufficient to achieve some beneficial effect on congestion in peak hours.

We agree. The notice did not claim that the proposed policies would have the exact effect of real congestion pricing, because they would not result in setting rates at the perfect market-clearing price. Without any differentiation between peak and off-peak fees, which is the almost universal case at present, there is no incentive for airlines to reschedule even the most marginally profitable operation to avoid peak hours. If an increase in fees adversely affected the cost-effectiveness of even a few of these operations, there would be a positive effect on congestion and a reduction in delays during peak hours.

Comment: The proposal to allow a 2-part landing fee does not require that the airport be congested, which would permit a landing fee that discriminates against smaller aircraft when there is no justification related to congestion.

Response: The existing policy does not expressly limit the forms in which airport fees can be imposed, as long as they are reasonable, not unjustly discriminatory, and limited to recovery of appropriate airport costs. Conventional weight-based fees meet these tests. The policy amendments make clear that a 2-part fee can be justified in a situation where demand exceeds capacity in peak hours, and smaller aircraft serving relatively fewer passengers contribute to the peak hour congestion. In this case a 2-part fee could be justified by its beneficial effect on peak hour congestion without significantly affecting the number of passengers able to travel at peak hours. The amendments do not limit the use of a 2-part fee to congested hours, but it is not clear what other circumstances might justify such a fee. In any event, the fee should be justified based upon meaningful consultation with carriers, including exchange of appropriate financial information. The fee, if challenged, would require evidence that it is reasonable, not unjustly discriminatory, and based upon legitimate objectives.

Comment: If the proposed charges are adopted as final policy, the Department should adopt Option 1, limiting charges for secondary airports to peak hours, to avoid unfairly penalizing carriers already operating outside of peak hours. Carriers that already operate outside of peak hours noted that imposing the costs of secondary airports and projects under construction in all hours, rather than just congested hours, would increase costs for operators that have no operations in peak hours. Thus the proposed policy would simply increase costs for these operators with no incentive effect on peak hour congestion.

Response: We agree. This comment argues for limiting the additional proposed charges to flights in congested hours, Option 1. Otherwise, cargo operators and other operators that are already avoiding congested time periods would be penalized without any related incentive effect. Charging the additional costs in all hours would also result in the off-peak operators subsidizing operations during peak hours, actually reducing the intended disincentive for operation during those peak hours. Limiting charges for secondary airports, as well as facilities under construction, to peak hours maximizes the potential differentiation between peak and off-peak charges within a revenue-neutral system, and best serves the purpose for which these charges are authorized.

Comment: The Department did not conduct any analysis of the effects of the proposal showing that it would have the intended effect on airport congestion.

Response: This comment is technically correct but presumes that the Department needed quantitative analysis before it could conclude that the proposals would reduce congestion. The premise of the proposal that added costs would result in fewer operations is based on general pricing theory, and on the reliable conclusion that at some level of cost and unprofitability, a carrier will discontinue or reschedule an operation. The Department did not attempt a study of the proposals, because a conclusion on the effectiveness at an airport would depend entirely on the circumstances at each airport and the details of the charges imposed. A simulation of the effect of pricing at an airport was conducted by the FAA Center of Excellence for Operations Research (NEXTOR) in 2004. This research was done in cooperation with a number of stakeholders, including airline participants. While the simulation was necessarily a simplification of an actual airport situation, the results did indicate that peak period pricing would affect carrier use of peak hours.

The Department agrees with commenters that the proposed policies should not be used to increase costs to operators at a particular airport unless there is reason to believe they would have an actual positive effect on congestion. That effect could be either to relieve existing congestion and reduce delays to an acceptable level, or to prevent that level of congestion if it would otherwise occur. The final policy language adopted incorporates two changes to reinforce that policy.

Both charges for facilities under construction and charges for a secondary airport are authorized only if they would have the effect of reducing or preventing a level of congestion serious enough for the airport to be identified on an FAA list of airports that either have or are forecasted to have among the highest level of operating delays at U.S. airports. The fact alone that an airport is congested within the definition of the policy is not in itself sufficient to justify imposing the fees; the airport proprietor must have reason to believe that the added fees in peak periods would have an actual effect in reducing or preventing that congestion. The airport proprietor may implement the added fees as it would any other fee change. We expect the airport proprietor to engage in meaningful consultation with airport users before implementing new or increased fees, particularly by using a new fee methodology. As we discussed in the Notice of Proposed Amendment, the airport proprietor should provide adequate information to enable the airlines to evaluate the proprietor's justification for the new charges and to assess their reasonableness. Each side should thoroughly consider the views of the

other. As we indicated in the 1996 Rates and Charges Policy, at paragraph 1.1.1, and in Appendix 1 to that Policy, we encourage the airport operator to provide certain historic financial information for the airport, economic, financial, and/or legal justification for change in fee methodology or level of fees, traffic information, and planning and forecasting information. In determining the reasonableness of any new fee instituted under this policy, we will consider the effectiveness of the fee in addressing congestion. Even in the absence of a complaint, the FAA may request a report on the effectiveness of a fee imposed under these amendments, under the FAA's authority in 49 U.S.C. 47107(a)(15) and the AIP grant assurances.

The policy amendments adopted here include new language emphasizing the importance of providing this information to carriers in proposing higher peak period fees, including justification for the fees. While the airport proprietor's objective justification of the peak period fee is not technically required by regulation, it may serve to rebut a *prima facie* case of unreasonableness if the fee is challenged by a carrier in a proceeding before the Department under 49 U.S.C. 47129, or in an FAA grant assurance investigation under 14 CFR part 16.

We note that one commenter observed that the Department had in fact found that revenue-neutral peak period pricing would not work, in an analysis of peak period pricing in connection with the environmental impact statement for a proposed runway extension project at Philadelphia International Airport. However, that analysis determined not that such pricing would not work at all, but rather that it would not reduce delays so as to meet the purpose and need of the proposed runway project. Specifically, the analysis showed that peak period pricing would reduce general aviation and turboprop operations on the shorter runways but would have no impact on congestion on the primary air carrier runways and therefore would not reduce delays at the airport. That example is not pertinent to the policies adopted here. As discussed below in more detail, runway development projects are the preferred response to demand. Pricing should only be used when new runways cannot be made available in time to prevent significant delays that would adversely affect the national air transportation system. Moreover, that analysis assumed charges only for traditional current airfield costs at the congested airport itself, and not the additional costs of projects under construction and secondary airports under consideration here. So, the Philadelphia analysis does not have any relevance for the policies adopted here, and certainly does not indicate they would not have an effect on congestion at PHL or any other airport.

An airline employee involved in scheduling noted the complexities of airline scheduling and suggested that a carrier's response would not necessarily be what the airport intends. The Department recognizes that airline scheduling is indeed complex, and that carriers take a number of factors into account in deciding where and when to use a certain aircraft. However, we continue to believe that the cost of operating at a particular airport at a particular time will become a factor at some price point. If the proposed policies allow an airport operator to reach that price point for even a small number of marginally efficient operations in peak hours, the purpose of the policies will have been served.

A carrier association noted that because landing fees work as an incentive only on landings, departures in peak hours would be unaffected and actually subsidized by operators with more arrivals in a congested period. The Department believes that there will typically be enough of a balance between arrivals and departures that an incentive that works only on arrivals would still work in most cases. Presumably this issue would be addressed in an airport operator's consideration of the fees before they were adopted. We note that the Massport peak period pricing rule applies congestion fees to both arrivals and departures, which is permitted under the Department Rates and Charges Policy as long as total fees do not exceed aggregate airfield costs.

Commenters who concluded that the proposals would not reduce congestion had different views about what that meant. Many carriers argued that because the proposed policy changes would not achieve their stated purpose and would simply increase costs to industry and travelers, the Department should not adopt the changes. Some airports and associations reached the opposite conclusion—that because a revenue-neutral pricing system could not raise fees enough to affect scheduling, the Department should abandon the requirement for revenue neutrality and allow airports to set fees high enough to be effective.

The Department is required to provide guidance on reasonable fees based on our survey of the nationwide aviation field, and we have found that airfield fees nationwide typically are based on capital costs plus recurring costs associated with maintenance, upgrading, repaving, and installation of safety and security systems. The cost-based system of user fees also conforms to U.S. international obligations. As mentioned above, the Department believes that the newly allowed charges that may be incorporated in peak fees can have an effect on enough operations to affect congestion, at least at some airports, and should be available to the operator of a congested airport where that effect can be reasonably predicted and ultimately demonstrated.

Comment: The two-part landing fee would simply impose additional costs without resulting in schedule changes for smaller aircraft as intended. The effectiveness of the two-part landing fee is a somewhat different issue from the two facilities charges. Most commenters seemed to accept that a 2-part landing fee would have the effect of discouraging use of smaller aircraft in peak hours, as intended, although they did not agree on the fairness or benefits of that effect (discussed under 4. *Unjust discrimination* below). However, carriers providing international service argued that it is not realistic to expect feeder flights that use smaller aircraft to move out of peak hours, because of the inconvenience to international and long-haul passengers. So, they argued, it is not clear that the increased fees per seat for smaller aircraft would have the intended effect, at least for some small aircraft operators at international airports.

Response: The Department cannot anticipate the reaction of each carrier to a change in landing fees at peak periods, because of the many different factors each carrier would need to consider in evaluating the costs and benefits of a schedule change. The Department continues to believe that higher peak period fees will affect scheduling for some flights of smaller aircraft, even if not all, and the effect on some can be sufficient to have a positive effect on congestion.

Comment: If airfield costs at a secondary airport are charged to carriers at a congested airport, the resulting below-cost fees at the secondary airport might attract new service at the secondary airport, rather than promoting relocation of flights from the congested airport as intended. This new service would be in competition with carriers at the primary airport, as well as being subsidized by them.

Response: This result is theoretically possible but is not a reason not to permit the charges as proposed, if those charges would be effective in relieving

congestion at the main airport in the system, to the benefit of the carriers operating there.

Comment: The ability of airport proprietors to raise landing fees to control congestion, as proposed, acts as a disincentive for airport proprietors to invest in new capacity, which should be the primary solution for congestion.

Response: First, the airport proprietor will not actually receive more funds over time and across the airport system under the policies adopted, although current fees at the congested airport may be greater than before. The Department does agree that building new runways and otherwise generating new capacity is the preferred response to demand, and that pricing should be used only where airport development projects cannot be built and made available in time to prevent congestion. The policies adopted should not undercut an airport operator's incentives to add runways and expand capacity, because they will not allow the airport operator to increase system revenue over time. The adopted policy is designed to augment tools available to local governments who operate airports to resolve capacity issues. 73 FR at 3312.

Comment: The January 17 notice stated that generation of additional revenue for capacity enhancement was a stated objective, or at least a benefit, of the proposed policies. Airports are fully able to recover costs and fund new projects now, and do not need additional revenue to support capacity expansion projects.

Response: The notice observed that an airport proprietor would have additional revenue for development, as a result of the ability to charge for facilities under construction. The notice did not claim that result as a purpose of the proposals, but did suggest that it was a corollary benefit. We agree with the comment that generation of revenue is not the purpose of the proposals. The final policy amendments adopted are intended to relieve congestion at peak periods at congested airports, not generate additional revenue for airports. The new charges, if adopted, would increase costs for some carriers for peak hour operations, but would not increase aggregate carrier costs for airfield facilities and services in a local airport system over time.

4. Unjust Discrimination

Many of the comments that criticized the proposals cited the unfair and disproportionate burden on some operators, concluding that the proposed landing fees, if adopted by an airport, would be unjustly discriminatory toward one or more categories of operators. As some commenters noted, the proposed fees are in part actually *intended* to be discriminatory, so their legality depends on whether or not the discrimination is sufficiently justified to be ''justly discriminatory.'' A corollary issue is whether an otherwise justified discriminatory fee has unintended adverse effects on operators that do not contribute to the congestion problem being addressed.

Typical comments claiming discrimination were:

Comment: The proposed fee increases would not induce any movement out of the congested hours, so they would unfairly raise carrier costs for no reason.

Response: The fees authorized under this policy may be justified in terms of having the potential to reduce delays in congested hours, including by encouraging use of larger aircraft, as well as being supported by actual costs. As noted above, however, the policy changes are adopted based on the Department's belief that the charges can have some beneficial effect, because some carriers will decide not to pay the higher charges to operate in peak hours. This conclusion is reinforced by our strongly urging airport operators to justify and explain to carriers the methodology for any fee increase before imposing it at a particular airport.

Comment: The proposed fee increases would force some operators to move out of the peak hours, even though their customers want to travel then.

Response: This comment is partially correct although we add that operators scheduling several flights during peak periods with smaller aircraft may decide to consolidate some flights with larger aircraft and thereby not inconvenience passengers. The Department understands that moving flights out of peak hours means moving some passenger trips out of peak hours. The flights and passengers that are able to continue to use peak hours will experience less delay, and whether or not their fares are increased will be determined by the competition, the gauge of aircraft used, and other factors.

Comment: Some operators can move flights and others cannot, and the higher pricing in peak hours unfairly impacts categories of operation that cannot move flights out of peak hours or to secondary airports.

Response: From a market standpoint, this is essentially another way of saying that operation in peak hours has a higher value for some operators than for others. Charging a higher price in peak hours results in the allocation of peak hour flights to the carriers that value operation in those hours the most. This is the market working, not an indiscriminate side-effect of higher charges. It is true that there are some operations that may not be able to reschedule or operate at an alternative secondary airport However, those operations receive the same benefit as all other operations from a reduction in peak hour congestion at the congested airport.

Comment: If costs for facilities under construction and secondary airport airfields are included in the proposed charges applied to all operations throughout the day, some categories of operation will be penalized by higher fees even though they have no role in the current congestion or the intended solution.

Response: We agree. Accordingly, the final policy permits charges for facilities under construction and the costs of a secondary airport only in peak hours at the congested airport, i.e., hours in which that airport experiences delays that qualify it as a congested airport (Option 1 for the proposed charge for facilities under construction).

Comment: Under a 2-part landing fee, some carriers and categories of operation will have no ability to upgauge, and will simply have to absorb higher fees or cease operation in the market.

Response: This may be true for some operators. The effect is mitigated with respect to markets subsidized under the Essential Air Service (EAS) Program, because the final policy allows an airport operator to exempt those markets from the three new policies (although such operations would still be subject to conventional landing charges). However, for other operations, carriers will need to assess the feasibility of each flight with a particular aircraft type, taking into consideration the effect of the per-operation component of the landing fee at the airport.

Commenters also offered specific examples of how the proposed charges would result in a discriminatory effect for some operators. Some examples cited in the comments are:

Comment: Raising costs to encourage use of larger aircraft unfairly targets operators of regional jets and the markets they serve. One association and carriers operating regional jets argued that segments of the national air service market depend on that size aircraft, and that efforts to eliminate small jet operations are inconsistent with § 40101(a)(16), which establishes a policy of ensuring that residents of small and rural communities have full access to the national air transportation system. Several small U.S. airports and communities complained that the pricing incentive to upgauge from

regional jets to larger aircraft, if effective, would jeopardize their connections to hub airports, because the market and sometimes the airport would not accommodate larger jets. Some airport representatives commented that the Department should develop a list of criteria for small communities to be eligible for exemption from higher landing fees, and allow airport operators to incorporate those exemptions in their fees to protect small community access. Some commenters argued that carriers and passengers want to have regional jet service, and that the Department, therefore, should ''let the market work'' by not allowing airports to create a disincentive to that service.

Response: The notice did not directly address the potential impact on small community service. We agree that higher peak period charges, or a higher per-operation landing fee, could be a disincentive to operation of smaller aircraft types in peak hours—that is one purpose of the proposed policy. While it is not the Department's intention to adopt a policy that would adversely affect service in any particular market, we understand the possibility that higher peak period landing fees could result in a reduction or even loss of service in marginally profitable markets. The final policy adopted permits an airport operator to exempt flights from the added peak period charges, if the flights are being subsidized under the EAS Program. The ability of an airport operator to exempt EAS-subsidized flights from peak period pricing has been recognized by the Department previously. Not all of the markets served by regional jets and smaller aircraft will be eligible for this exemption, however, and airport proprietors may not extend the exemption to non-EAS markets, because that action would be considered local regulation of air carrier rates, routes and services. Accordingly, it is possible that service in some markets could be adversely affected as described in the comments.

As a result, actually ''letting the market work'' may well not provide the broadest or most uniform distribution of service to all markets from the congested airport. It will, however, come closer to providing the most economically efficient use of the congested airport for the greatest number of travelers. Arguably, open access for all to the scarce resource of a congested hub airport at peak hours, when demand for access exceeds airport capacity, is itself a distortion of the market. Conversely, a requirement to pay more for that resource during periods of congestion is actually closer to letting the market work.

Comment: Foreign carriers will be disproportionately affected by the proposed charges, because they cannot avoid them or absorb costs across a larger domestic system. Foreign carriers and governments commented that these carriers could not use off-peak hours because of the restrictions on operation in European and Asian airport markets, and could not operate at secondary airports because those airports would not be U.S. ports of entry. Accordingly, these carriers would bear the full effect of the increased landing fees, with no ability to avoid the costs or to spread the costs across other flights as U.S. competitors could do.

Response: We agree that there may be limits on foreign carriers' ability to avoid the fees, although they are not unique in that regard. International flights by U.S. carriers will be affected in exactly the same way. To the extent that higher charges at peak periods reduce congestion, carriers operating international service will benefit from the resulting reduction in operating delays and greater scheduling reliability. The policy allowing airport operators to charge higher fees in peak congested hours recognizes that many operators will choose to pay the higher fees to retain access to peak hours, for a variety of business reasons; the need for international flights to operate in those hours is one such reason. Those carriers get something in return for the higher fees: a reduction in operating delays.

U.S. carriers claimed that the increased fees would unfairly fall on U.S. carriers, because foreign carriers would necessarily be exempted from the fees in order to comply with ICAO standards and air service agreements. As discussed in part in this notice under *Legal Authority*, we do not believe ICAO guidance or air service agreements require exemption of any operators from the proposed charges, so there would be no difference in the fees charged to U.S. and foreign carriers.

Comment: The proposed policies would adversely affect transborder Canadian service disproportionately, because many flights between Canada and major U.S. airports use regional jets. This is similar to the complaints by U.S. carriers that use regional jets and cities those carriers serve, but with the additional consideration of provisions in the bilateral agreement with Canada. Canadian carriers, airports, and a carrier association argued that the U.S.-Canada bilateral agreement would prohibit the application of some or all of the three proposed policies to transborder flights.

Response: The U.S.-Canada bilateral agreement is similar to other U.S. air service agreements. For the reasons discussed above under *Legal Authority,* the Department does not believe the terms of those agreements prohibit the proposed charges, and reaches the same conclusion with respect to the U.S.-Canada bilateral agreement. There is no language in the agreement that specifically requires weight-based landing fees or prohibits other methodologies for landing fees. The agreement contains the standard requirement that fees be equitably apportioned among categories, but that in itself does not prohibit a per-operation component in the landing fee with justification based on the circumstances existing at the airport. With respect to charges for facilities under construction, the agreement provides only that charges may not exceed the costs of providing appropriate airport services. We believe the policy allowing an operator of a congested airport to impose the costs of airfield facilities already under construction is not inconsistent with this language. Finally, we note that the agreement permits charges for services ''at the airport or within the airport system,'' and thus does not prohibit appropriate charges for a secondary airport in a system where the primary airport is congested due to excess demand.

We recognize that the proposed policies could have some effect on carrier decisions regarding transborder service, as with service in U.S. markets at congested airports. However, the policies would apply to Canadian markets and Canadian carriers in exactly the same way as they would to U.S. markets and carriers, and would not be prohibited by antidiscrimination or other provisions in the U.S.-Canada bilateral agreement. One commenter expressed concern about the effect on access by Canadian carriers to Reagan Washington National and LaGuardia Airports, which is expressly guaranteed by the agreement. Both airports are included on the list of congested airports. However, as Reagan Washington National does not currently have any congested hours, these policies would not be used there at this time. . Any peak hour charges adopted by the Port Authority of New York and New Jersey at LaGuardia would need to take into consideration the terms of our bilateral aviation agreement with Canada.

Comment: Carriers that operate a single aircraft type have no opportunity to up-gauge, and would simply pay higher fees for the same operation, or cancel some operations.

Response: The policy allowing airport operators to charge higher fees in peak periods is not directed toward any particular operator, but will have an effect on any operator using aircraft that are not economically feasible with those fees in effect. The fact that an operator's entire fleet will be affected to some degree is not a persuasive reason to guarantee that operator lower-cost access to peak hours at a congested airport by exempting it from the general effect of the pricing regime. Some operators will find it beneficial to pay the higher peak fees to continue peak hour operations, along with a reduction in operating delays in those hours, but others may not. The Department does not consider that possibility a reason to deny airport operators the use of the proposed policies to enhance the effect of peak period pricing at their airports, when justified by peak hour congestion.

Comment: If the costs of future projects and secondary airports are added to charges throughout the day at the primary airport, rather than just during peak hours, then the burden falls unfairly on operators that do not contribute to the problem. Cargo operators operate largely in night hours when there is no issue of congestion.

Response: As discussed under *Effectiveness above,* the final policy avoids this result by limiting the application of the additional costs to operations in peak hours.

Comment: The fees would make operations in peak hours far more expensive for general aviation and on-demand air taxi operators, even though those operators make no significant contribution to the current congestion.

Response: The policy adopted, like the 1996 Rates and Charges Policy as a whole, does not include any general exception for general aviation. However, airfield charges must be reasonable and not unjustly discriminatory. Presumably an analysis of a proposed peak period fee by the airport proprietor would reach some conclusion about whether general aviation flights are contributing to peak hour congestion at the airport or not, and support a corresponding pricing policy for general aviation flights. Proposed charges on general aviation could reflect, for example, whether general aviation flights at the airport compete with air carrier aircraft for use of the same runways. For this reason it is more appropriate to consider general aviation charges through actual, case-by-case analyses of their activity and impacts on congestion at each airport, rather than define a separate policy for general aviation in this policy statement.

5. Comments That the Proposals Should Define an Airport Proprietor's Authority More Broadly

Operators of large airports and associations representing airports generally commented favorably on the intent of the proposed policy to clarify and expand the ability of airport operators to impose higher fees in peak hours at a congested airport. However, some commenters requested that a final policy be revised to avoid actually limiting an airport operator's existing proprietary authority. Some commenters further requested that the final policy contain language expressly expanding the airport operator's flexibility to impose fees beyond what the Department proposed.

Comment: The policy should clarify that an airport operator may use a ''limitless'' variety of methods to set landing fees, including a purely per-operation fee. Specifically allowing a 2-part fee suggests airports cannot impose other kinds of fees besides weight-based and 2-part weight-based and per-operation fees. Also, the policy should not rule out innovative fees such as negative landing fees at off-peak hours.

Response: The policy does not define the universe of kinds of landing fee an airport operator may impose, but only clarifies that a 2-part landing fee may be used at peak hours to relieve congestion, without necessarily being considered to be unjustly discriminatory. Other kinds of landing fees are possible, but any such fee would need to be both reasonable and not unjustly discriminatory. ''Negative landing fees'' would necessarily involve cash subsidies to carriers operating in off-peak hours, generated by fees on other operations in peak hours. Such subsidies, even if considered nondiscriminatory, could be inconsistent with requirements for use of airport revenue and would be likely to raise issues under U.S. international obligations. Negative landing fees were not proposed in the notice, and are not included in the final policy.

Comment: Clarify that airport operators are not preempted from using landing fees to create economic incentives for carriers to alter schedules at peak times, up-gauge aircraft types, or shift service to less congested airports. A landing fee can affect carrier business and marketing decisions not only indirectly, but also with the stated purpose of having a direct effect on carrier decisions.

Response: As discussed under *Legal Authority* above, an airport operator pursuing a legitimate objective in the exercise of its proprietary authority consistent with its other responsibilities under Federal law has some ability to influence carrier decisions. So, an airport proprietor can charge a higher landing fee in peak hours to influence carriers to use less congested hours, because reducing excess demand that results in a high level of operating delays on the airfield at peak hours is a legitimate objective of the Department and the airport proprietor. However, that authority is not unlimited, given the prohibition on airport regulation of airline rates, routes, and services in 49 U.S.C. 41713(b). A landing fee designed to implement a preference for certain aircraft types, but not justified by any condition or purpose related to the functioning of the airfield itself would be preempted under § 41713(b).

Comment: The Department should abandon the limitation on airfield fees to historic cost valuation and revenue-neutral airfield fees, and allow airports to use market pricing.

Response: The policies proposed were intended to permit airport proprietors some flexibility to use pricing to manage conditions of serious peak hour congestion, without deviating from the policy of cost-recovery, revenue-neutral charges. See 1996 Policy, ¶ 2.2. Moreover, the requested authority would be unnecessary to implement the policies proposed in the notice.

Comment: In allowing charges for facilities under construction, the Department should Adopt Option 2 for financing future construction, to permit the higher fees to be imposed throughout the day. Also, the policy should extend future financing to include new airports, not just new facilities.

Response: The final policy adopts Option 1, which provides that the added charges will be considered reasonable only in hours of peak congestion. The purpose of the policy is not cost recovery or revenue generation; rather the purpose is to allow for increased differentiation between peak and non-peak period pricing at the airport. Adding the charges of future facilities in off-peak hours works against this goal, and against the incentive for encouraging off-peak operation. It also penalizes operators already operating outside congested hours, by imposing unnecessary costs on those operators with no possible incentive effect on scheduling. As airports typically adjust their fees regularly and can capitalize the project costs remaining after construction, limiting the charges to hours of peak congestion is not expected to be difficult or increase administrative burdens on airports.

With respect to allowing charges for the costs of future airports under construction, we do not see the need for a statement of general policy on this issue. Cases in which the policy might be applied would rarely occur, and any decision on the reasonableness of the charges might be highly dependent on the facts of a particular case. The final policy adopts the provision on charges for facilities under construction as proposed—limited to facilities at the airport where the charges are imposed.

Comment: In allowing charges for the costs of secondary airports in the region, the Department should extend the list of secondary airports eligible for cross-subsidy to regional airports not owned by the same sponsor as the primary, congested airport. The final policy should allow airport operators to enter into agreements, approved by the Department, for support of one airport with fees from another.

Response: The FAA has traditionally not allowed airports with different owners to enter into agreements that affect access to the airports, primarily because one airport sponsor cannot delegate its responsibility for reasonable access under its grant assurances to another airport operator, or guarantee access at an airport it does not control. This new request is similar in that an airport operator would be charging its carriers for the access benefits at another airport, and the costs of operation of that airport, when it had no control over the access to or costs at that second airport. The final policy adopts the provision as proposed, limiting charges to the costs of airports owned or operated by the same airport proprietor that operates the congested airport.

Comment: The Department should clarify that the proposed fees could be implemented outside the airport's existing lease and use agreements.

Response: The Department assumes that airport proprietors would take into account any existing agreements with carriers before imposing any new charges, and could only impose those charges as the agreements provided or when they expired. Accordingly, the final policy amendment does not include the requested language.

Comment: The notice stated that an airport proprietor ''may consider the presence of congestion at the [congested] airport when determining the portion of the airfield costs of the other airport to be paid by the users of the first airport during periods of congestion.'' This can be understood to mean that the airport can impose the opportunity costs of congestion in its landing fees.

Response: This statement in the notice was intended merely to refer to a determination of the portion of the second airport's costs that could be included in fees at the congested airport. Nothing in the proposed amendments would authorize an airport proprietor to charge airfield fees that include any amount in excess of the airport proprietor's actual system costs. Other commenters expressed confusion about the intended meaning of this same language, and it is not included in the final amendment.

The Policy Amendments Adopted

After review of the public comments, the Office of the Secretary of Transportation and the FAA have determined that the proposed amendments to the 1996 Rates and Charges Policy should be adopted, with revisions to address concerns and suggestions raised in the comments. The amendments do not alter one of the fundamental principles of the 1996 Rates and Charges Policy: That reasonable airfield fees must be based on the capital and operating costs of the facilities for which the fees are assessed. None of the amendments will permit an airport to generate revenues in excess of the allowable costs of providing airfield facilities and services at the congested airport and its related airport system, as defined in accordance with the 1996 Rates and Charges Policy.

The effect of each of these modifications is to allow the airport operator to increase the cost of landing at a congested airport during periods of congestion, even if congestion lasts through much of the day. By raising the costs of using the congested facilities at peak times, the airport operator would provide an incentive for current or potential aircraft operators to (1) adjust schedules to operate at less congested times (if they exist); (2) use less congested secondary or reliever airports to meet regional air service needs; or (3) use the congested airport more efficiently by up-gauging aircraft. The three amendments are not intended to be mutually exclusive. In other words, if the circumstances justify doing so, an airport proprietor might use a combination of two, or even all three, charges in setting landing fees during periods of congestion. Any charges imposed on international operations, whether using this proposed flexibility or not, would also have to comply with the international obligations of the United States, including requirements that the charges be just, reasonable, and equitably apportioned among categories of users.

The Department continues to consider airport development and expansion of airport capacity to be the most appropriate and the preferred long-term action to address airport congestion and delay. However, at airports that meet the definition of congested airports when development projects are planned but will not be available in time to prevent increasing delays, and at those congested airports where capacity expansion is simply not feasible, the amendments adopted in this action will provide the airport proprietor additional tools to manage available capacity.

Principles Applicable to Airport Rates and Charges

The amendments adopted include a new paragraph 6 in the statement of basic principles applicable to airport rates and charges. The new paragraph affirms the requirement that all airport charges imposed on international air transportation in the United States comply with the international obligations of the United States. This is not a change in policy, because this requirement has always applied. However, in view of the many comments expressing concern that the proposed charges would not comply with international agreements and other authority, the Department is revising the amendments to include provisions affirming the strong commitment of the United States to meet its international obligations in the oversight of airport charges in the U.S. The amendments adopted, therefore, include an express statement of the requirement for fees at U.S. airport to meet all U.S. international obligations regarding airport charges, in the same terms used in U.S. bilateral air service agreements. These obligations, of course, apply to the entire Rates and Charges Policy and not just the amendments adopted in this action.

Special Provisions Applicable to Congested Airports

The amendment adds a new section 6, *Congested Airports.* Paragraph 6 defines a congested airport for the purposes of the Rates and Charges Policy according to two criteria, one relating to existing congestion and the other to future congestion. An airport qualifies as currently congested if it accounts for at least one percent of system delays nationally or is listed in table 1 of the FAA's Airport Capacity Benchmark Report 2004. Whether these criteria are met should be determined using the most recent year for which delay data are available and the most recent Airport Capacity Benchmark Report available. An airport is considered

congested in the future if it is forecast to meet a defined threshold level of congestion in the FACT 2 study or the most recent update of that study. This revised definition responds, in part, to comments that the proposed definition included some airports that were not congested. Note that while the definition defines an eligible category of airport for use of fees to control congestion, there must be a congestion problem and those fees must still be reasonable. The new fees may not at this time be imposed at airports like Reagan Washington National, St. Louis, and Pittsburgh that do not currently have congested hours. An airport could not impose fees today based on a forecast that it will become congested years in the future. It could, however, put in place measures to address future congestion that would become effective when it met the definition of congested or was about to do so. Section 6 also defines ''congested hour'' as an hour during which demand exceeds average runway capacity resulting in volume-related delays or is anticipated to do so.

New paragraph 6.1 emphasizes the importance of providing operators an explanation or justification for any use of the peak period fees authorized in this policy change and of consultations with carriers as already provided in the Rates and Charges Policy. The paragraph expressly references Appendix 1 to the Policy, containing a list of the information the Department would expect the airport proprietor to provide to carriers and other operators.

New paragraph 6.2 clarifies that an airport proprietor may adopt measures to address congestion even before conditions would justify peak period pricing, as long as that pricing does not take effect until the conditions described in that paragraph are met. Such a measure would include a specified condition, such as number and severity of chronic operating delays, that triggered the implementation of the pricing. Advance consideration of the need for peak period pricing not only allows full time for consultation with users, but also allows users to adjust schedules well in advance to avoid congestion that would trigger the peak period pricing.

New paragraph 6.3 provides that an airport operator that imposes peak period charges for facilities under construction, or for the costs of a secondary airport in the system, can exempt from those charges any flights operated under an Essential Air Service (EAS) Program subsidy, in accordance with 49 U.S.C. 41731–41735. The Department has previously acknowledged that an airport proprietor may exempt EAS subsidized flights from general fee increases that would jeopardize that service. That determination is based on the Supremacy Clause of the U.S. Constitution and the interpretation that the proprietary exception to Federal preemption only permits an airport proprietor to take actions consistent with the implementation of a Federal program, and not to make its own decision about preferences for certain markets. As discussed in the response to comments above, the Department sees no authority for an exemption beyond the EAS Program eligible airports.

Two-Part Landing Fee

Paragraph 2.1 is amended by adding a new paragraph 2.1.4 as proposed, to clarify that an airport proprietor may impose a landing fee that incorporates both weight-based and per-operation elements. There are conditions on the use of a two-part fee: It must reasonably allocate costs to users on a rational and economically justified basis, and it may not generate fees in excess of allowable airfield costs.

New subparagraph 2.1.4(a) notes that a positive effect on congestion reduction, such as enhancing the number of passengers accommodated during congested hours, may justify a fee incorporating a substantial per-operation component, such as the two-part landing fee. The policy does not limit the use of two-part landing fees to congested airports, although the Department does not currently see any alternative justification for such fees.

New subparagraph 2.1.4(b) provides for the exemption of EAS-subsidized markets from the application of a two-part landing fee, and provides guidance on how such flights would otherwise be charged for their share of airfield costs. Exemption from the two-part fee would not be a waiver of all fees, but rather an exemption from the fee increase due to the per-operation component of the two-part fee. The assumption is that under an exemption, an EAS operator would continue to pay the weight-based charge in effect before adoption of the two-part fee (or that would have been in effect if all carriers were paying a weight-based charge). The paragraph also makes clear that where an exemption results in lower charges for EAS operators, the resulting loss in revenue cannot be made up by an increase in the landing fees charged to other operators.

Charges for Facilities Under Construction

The policy as amended would replace paragraph 2.5.3, which was vacated by the court of appeals, with a new paragraph addressing charges for facilities under construction, as proposed in the notice. For the reasons explained in the notice, the replacement language is consistent with the court's opinion that vacated the original paragraph 2.5.3. The final policy adopts Option 1 in the notice, limiting the added charges for facilities under construction to hours when peak hour pricing would be justified. The paragraph as adopted includes the three conditions in the proposal that serve to limit the charges to facilities that are approved and under construction. This effectively limits additional landing fees to projects for which the airport operator is already incurring construction costs, and which will be in use in the relatively near future. In response to comments, paragraph 2.5.3 as adopted also includes a new fourth condition not in the notice: That the added costs for current operators would have the effect of reducing or preventing congestion and operating delays at the airport. While the notice limited this charge to congested airports, it did not contain an express condition that the charge actually have a positive effect on congestion, although that condition was implied. This new language adds an express statement of that condition. For a new charge, the effect could be predicted using information available. For a charge that had been in effect for some time, there would be actual performance data available for review of the effectiveness of the charge.

New paragraph 2.5.3(a) is adopted as proposed, simply requiring that any construction costs reimbursed during the construction period not be included in the final project cost when completed.

The final policy deletes the proposed paragraph 2.5.3(b), which suggested that an airport proprietor consult the ICAO *Airport Economics Manual*. The Department strongly urges that charges be constructed in accordance with this Manual; however, the new paragraph 6 of the *Principles*, stating clearly the broad obligation to comply with all U.S. international obligations, makes the reference to one ICAO manual too limiting.

The policy adopted includes a new paragraph 2.5.3(b) clarifying that a charge for a facility under construction cannot exceed the actual costs as incurred by the airport proprietor. It indicates that the costs can be recovered as they are incurred, but the airport proprietor could not accumulate funds in advance of requirements. Second, charges are limited to the debt service over a conventional amortization period which takes into account the expected

term of the permanent financing. Some air carriers commented that the policy did not prevent an airport proprietor from charging all costs of construction as incurred, even though the finished project would normally be financed and paid off through debt service over a period of years. While the policy does not prescribe in detail any particular methodology, it does limit the added charge in any year to a commercially reasonable amount for debt service on the financing for the particular project amount involved.

The final policy as adopted includes a conforming amendment to paragraph 2.4.4 not included in the notice. Paragraph 2.4.4, relating to recovery of costs for debt service, contains a parenthetical ''(for facilities in use),'' which states the general policy limiting charges to facilities that are completed and in use by the operators being charged. To assure internal consistency of the amendments, the final policy amends the parenthetical to read, ''(for facilities in use or in accordance with paragraph 2.5.3),'' to provide for the limited exception for facilities under construction at congested airports.

Charges for the Costs of a Secondary Airport

As stated in the notice, paragraph 2.5.4 of the 1996 Rates and Charges Policy permits the operator of an airport to include in the rate base of that airport costs of another airport currently in use if three conditions are met: (1) The two airports have the same proprietor; (2) the second airport is currently in use; and (3) the costs of the second airport to be included in the first airport's rate-base are reasonably related to the aviation benefits that the second airport provides or is expected to provide to the aeronautical users of the first airport. Subparagraph (a) further provides that the third condition will be presumed to be satisfied if the second airport is designated as a reliever airport to the first in the FAA's National Plan of Integrated Airport Systems (NPIAS).

The notice proposed to amend subparagraph 2.5.4(a) to add another category of airports to the presumption—those that the FAA has designated as secondary airports serving cities, metropolitan areas, or regions served by congested airports. The three conditions in paragraph 2.5.4 continue to apply to this new presumption. The final policy includes the proposed amendments with one change: To satisfy the presumption that the secondary commercial airport benefits users of the congested airport, the policy as adopted provides that the added costs in peak hour charges at the congested airport must also have the effect of reducing or preventing further congestion and operating delays at that airport. The notice assumed that the proposed charges would have the effect of relieving congestion at the congested airport, but did not actually make that effect a requirement for the use of the charges by the operator of a congested airport. As with the charges for facilities under construction, for a new charge the effect could be predicted using information available. For a charge that had been in effect for some time, there would be actual performance data available for review of the effectiveness of the charge.

FAA has identified the secondary airports that would meet the first two criteria for the presumption in paragraph 2.5.4(a)(2) (i.e., the first airport is congested, and the secondary airport serves the same community or region), and monitors development projects at these airports in the FAA strategic plan or ''Flight Plan.'' The current list of secondary airports has been placed in the public docket. The FAA has also posted the current list of designated secondary airports on its Web site, and will keep it up to date.

The notice also proposed to add a new subparagraph 2.5.4(e) stating, first, that the proprietor of a congested airport may consider the presence of congestion when determining the share of the airfield costs of the secondary airport to be included in the rate base of the congested airport during periods of congestion, and second, that in no event would the airport operator be allowed to generate more revenue from airfield charges imposed at the two airports than the costs of operating the two airfields. Commenters were confused by the first part of that sentence, and some commenters entirely misunderstood its intended meaning. In lieu of the language as proposed, the final policy adopted contains a more direct statement in paragraph 2.5.4(a)(2) that charges for a secondary commercial airport may be used only when they have an actual effect in relieving or preventing congestion.

The final policy includes a new paragraph 2.5.4(e), which includes a slight revision of the second part of proposed paragraph (e) to expressly limit total charges to the allowable costs of the congested and secondary airport combined. New paragraph (e) adds new language clarifying that the allowable charges for a secondary airport are limited to customary airfield cost center charges. Some commenters expressed concern at the lack of guidance on costs of the secondary airport that could be charged to operators at the congested airport. The Department has not attempted to prescribe detailed guidance, in consideration of the variation in local rate methodologies at airports. In lieu of detailed guidance, the policy limits charges to airfield costs, and to those airfield costs which would be customary for the methodology in effect in that airport system. We believe that guidance will be sufficient to evaluate the reasonableness of a proposed peak hour charge that includes costs at a secondary airport.

Finally, the final policy adopted includes a conforming amendment to paragraph 2.2 of the Rates and Charges Policy. Existing paragraph 2.2 states the general rule that airfield charges cannot exceed the costs to the airport proprietor of providing airfield services and assets currently in use unless users agree otherwise. The final policy makes the carrier approval paragraph 2.2(a), and adds a paragraph 2.2(b) with an alternate exception: if the charge is imposed in accordance with paragraph 2.5.3, for facilities under construction, or paragraph 2.5.4(a), for the costs of a secondary airport. With these limited exceptions, the general rule limiting charges to facilities currently in use continues to apply.

Amendment of the Rates and Charges Policy

In consideration of the foregoing, the Department of Transportation amends the Policy Regarding Airport Rates and Charges, published at 61 FR 31994 (June 21, 1996) as follows:

Policy Regarding Airport Rates and Charges

Principles Applicable to Airport Rates and Charges

1. In *Principles Applicable to Airport Rates and Charges*, add a new paragraph 6 to read as follows:

6. Fees imposed on international operations must also comply with the international obligations of the United States, which include the requirements that the fees be just, reasonable, not unjustly discriminatory, equitably apportioned among categories of users, no less favorable to foreign airlines than to U.S. airlines, and not in excess of the full cost to the competent charging authorities of providing the facilities and services efficiently and economically at the airport or within the airport system.

Fair and Reasonable Fees

2. Amend subsection 2.1 by adding a new paragraph 2.1.4 as follows:

2.1.4 An airport proprietor may impose a two-part landing fee consisting

of a combination of a per-operation charge and a weight-based charge provided that (1) the two-part fee reasonably allocates costs to users on a rational and economically justified basis; and (2) the total revenues from the two-part landing fee do not exceed the allowable costs of the airfield.

(a) The proportionately higher costs per passenger for aircraft with fewer seats that will result from the per-operation component of a two-part fee may be justified by the effect of the fee on congestion and operating delays and the total number of passengers accommodated during congested hours.

(b) An airport proprietor may exempt flights subsidized under the Essential Air Service Program from the general application of a 2-part landing fee, and instead charge those flights a landing fee that would have been charged if a conventional weight-based fee was in effect. To the extent an exemption reduces total airfield fees recovered, the difference may not be recovered by increasing charges to other operators currently operating at the airport.

3. Revise paragraph 2.2 to read:

Revenues from fees imposed for use of the airfield (''airfield revenues'') may not exceed the costs to the airport proprietor of providing airfield services and airfield assets currently in aeronautical use unless:

(a) Otherwise agreed to by the affected aeronautical users; or

(b) The fee includes charges in accordance with paragraph 2.5.3 or paragraph 2.5.4(a), and there is a corresponding reduction in fees for users that would otherwise have paid those charges.

4. Amend paragraph 2.4.4 by revising the parenthetical phrase to read:

'' * * * (for facilities in use or in accordance with paragraph 2.5.3) * * *''

5. Add a new paragraph 2.5.3 to read as:

2.5.3. The proprietor of a congested airport may include in the rate-base used to determine airfield charges during congested hours a portion of the costs of an airfield project under construction so long as (1) all planning and environmental approvals have been obtained for the project; (2) the proprietor has obtained financing for the project; (3) construction has commenced on the project; and (4) the added costs for current operators would have the effect of reducing or preventing congestion and operating delays at that airport.

(a) The airport proprietor must deduct from the total costs of the projects any principal and interest collected during the period of construction in determining the amount of project costs to be capitalized and amortized once the project is commissioned and put in service.

(b) The amount of project costs included in current charges may not exceed an amount corresponding to costs actually incurred during the construction period, calculated in accordance with a commercially reasonable amortization period based on the expected term for the permanent financing of the project.

6. Amend paragraph 2.5.4(a) to read as follows:

(a) Element no. 3 above will be presumed to be satisfied if:

(1) The other airport is designated as a reliever airport for the first airport in the FAA's National Plan of Integrated Airport Systems (''NPIAS''); or

(2) The first airport is a congested airport; the other airport has been designated by the FAA as a secondary airport serving the community, metropolitan area or region served by the first airport; and adding airfield costs of the second airport to the rate base of the first airport during congested hours would have the effect of reducing or preventing congestion and operating delays at that airport in those hours.

7. Add a new subparagraph 2.5.4(e) to read as follows:

(e) Costs of the second airport that may be included in the rate base of the first airport are limited to customary airfield cost center charges. The total airfield revenue recovered from the users of both airports cannot exceed the total allowable costs of the two airports combined.

8. Add a new Section 6, Congested Airports to read as follows:

Congested Airports

6. Congested Airports

(a) The Department considers a currently congested airport to be—

(1) An airport at which the number of operating delays is one per cent or more of the total operating delays at the 55 airports with the highest number of operating delays; or

(2) An airport identified as congested by the Federal Aviation Administration listed in table 1 of the FAA's Airport Capacity Benchmark Report 2004, or the most recent version of the Airport Capacity Benchmark Report.

(b) The Department considers an airport to be a future congested airport if an airport is forecasted to meet a defined threshold level of congestion reported in the Future Airport Capacity Task 2 study entitled *Capacity Needs in the National Airspace System 2007–2025: An analysis of Airports and Metropolitan Area Demand and Operational Capacity in the Future* (FACT 2 Report), or any update to that report that the FAA may publish from time-to-time.

(c) A congested hour is an hour during which demand exceeds average runway capacity resulting in volume-related delays, or is anticipated to do so.

6.1. Because charges provided in paragraphs 2.1.4, 2.5.3 and 2.5.4 to address congestion can result in higher fees for some or all operators, it is especially important for airport operators proposing such charges to provide carriers in advance the information listed in Appendix 1, with special emphasis on data, analysis and forecasts used to justify the charges.

6.2. The proprietor of a future congested airport may adopt measures to address congestion in accordance with paragraphs 2.1.4, 2.5.3 and 2.5.4 of this policy, if the measures will not take effect or have any effect on airfield charges until a time when the airport meets the definition of a congested airport in paragraph 6 (a) or is anticipated to do so. This kind of measure would typically identify the specific condition, *e.g.*, operating delays that regularly exceed a certain level at the airport that would trigger the implementation of the special charges to address congestion.

6.3 An airport proprietor may exempt flights subsidized under the Essential Air Service Program from charges imposed under paragraphs 2.5.3 and 2.5.4 of this policy.

Issued in Washington, DC on July 8, 2008.

Mary E. Peters,

Secretary of Transportation.

Robert A. Sturgell,

Acting Administrator, Federal Aviation Administration.

[FR Doc. 08–1430 Filed 7–10–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Burlington International Airport, South Burlington VT; FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Burlington VT under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193)

and 14 CFR Part 150. These findings are made in recognition of the description of federal and non-federal responsibilities in Senate Report No. 96–52 (1980). On June 23, 2008, the Airports Division Manager approved the Burlington International Airport noise compatibility program. All of the proposed program elements were approved.

DATES: *Effective Date:* The effective date of the FAA's approval of the Burlington International Airport noise compatibility program is June 23, 2008.

FOR FURTHER INFORMATION CONTACT: Richard Doucette, Federal Aviation Administration, New England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (781) 238–7613.

Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Burlington International Airport noise compatibility program, effective June 23, 2008.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps.

The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR), Part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

(b) Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

(c) Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government; and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action.

Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The Burlington International Airport study contains a proposed noise compatibility program comprised of actions designed for implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 2011. The Burlington International Airport, Burlington VT requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on April 23, 2008, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 1 proposed action for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The Airports Division Manager therefore approved the program effective June 23, 2008.

One new administrative program measure was under consideration and it was approved. Residences within the 70dB DNL noise contour were eligible for land acquisition under the prior Plan, and that eligibility will now be extended to residences within the 65dB DNL contour. Various noise abatement and land use measures from the 1989 Noise Compatibility Plan were restated in this Record of Approval, so that all measures now in effect would be documented in the most recent Record of Approval.

FAA's determinations are set forth in detail in a Record of Approval endorsed by the Airports Division Manager on June 23, 2008. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Burlington International Airport, South Burlington VT.

Issued in Burlington, Massachusetts on June 23, 2008.

LaVerne F. Reid,

Manager, Airports Division, FAA New England Region.

[FR Doc. E8–16038 Filed 7–11–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Modification of the Cleveland, OH Class B Airspace Area; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces two fact-finding informal airspace meetings to solicit information from airspace users and others concerning a proposal to revise the Class B airspace area at Cleveland, OH. The purpose of these meetings is to provide interested parties an opportunity to present views, recommendations, and comments on the proposal. All comments received during these meetings will be considered prior

to any revision or issuance of a notice of proposed rulemaking.

Times and Dates: The informal airspace meetings will be held on Tuesday, September 16, 2008, from 2 p.m.–7 p.m., and Wednesday, September 17, 2008, from 9 a.m.–12 p.m. Comments must be received on or before September 25, 2008.

ADDRESSES: (1) The meeting on Tuesday, September 16, 2008, will be held at the Wellington Town Hall, 115 Willard Memorial Square, 2nd Floor Council Chambers, Wellington, OH 44090. (2) The meeting on Wednesday, September 17, 2008, will be held at Burke Lakefront Airport, Large Conference Room, 1501 North Marginal Road, Cleveland, OH 44114.

Comments: Send comments on the proposal to: Don Smith, Manager, Operations Support Group, Air Traffic Organization Central Service Area, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas 76137, or by fax to (817) 222–5547.

FOR FURTHER INFORMATION CONTACT: Pete DiFranco, FAA Cleveland ATCT/TRACON, Cleveland Hopkins International Airport, 5300 Riverside Drive, Cleveland, Ohio 44135; Telephone (216) 898–2020.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) The meetings will be informal in nature and will be conducted by one or more representatives of the FAA Central Service Area. A representative from the FAA will present a formal briefing on the planned modification to the Class B airspace at Cleveland, OH. Each participant will be given an opportunity to deliver comments or make a presentation. Only comments concerning the plan to modify the Class B airspace area at Cleveland, OH, will be accepted.

(b) The meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel.

(d) Position papers or other handout material relating to the substance of these meetings will be accepted. Participants wishing to submit handout material should present an original and two copies (3 copies total) to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) These meetings will not be formally recorded.

Agenda for the Meetings

—Sign-in.
—Presentation of Meeting Procedures.
—FAA explanation of the proposed Class B modifications.
—Solicitation of Public Comments.
—Closing Comments.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Washington, DC, on July 2, 2008.

Kenneth McElroy,

Acting Manager, Airspace and Rules Group.

[FR Doc. E8–16010 Filed 7–11–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Mazda

AGENCY: National Highway Traffic Safety Administration (NHTSA). Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of Mazda Motor Corporation (Mazda) in accordance with § 543.9(c)(2) of 49 CFR part 543, *Exemption From the Theft Prevention Standard*, for the Mazda Tribute vehicle line beginning with model year (MY) 2010. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated March 28, 2008, Mazda requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541) for the Mazda Tribute vehicle line beginning with MY 2010. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption From Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one of its vehicle lines per year. Mazda has petitioned the agency to grant an exemption for its Mazda Tribute vehicle line beginning with MY 2010. In its petition, Mazda provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Mazda Tribute vehicle line. Mazda will install its passive antitheft device as standard equipment on the vehicle line. Mazda's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

Mazda's antitheft device is a transponder-based electronic immobilizer system. Mazda stated that the Tribute vehicle line is developed by the Ford Motor Company (Ford), and the passive anti-theft electronic engine immobilizer system proposed for installation on the line is the same as Ford's SecuriLock Passive Anti-Theft System (PATS). The device will provide protection against unauthorized use (i.e., starting and engine fueling), but will not provide any visible or audible indication of unauthorized vehicle entry (i.e., flashing lights or horn alarm). Mazda stated that the integration of the transponder into the normal operation of the ignition key assures activation of the system. When the ignition key is turned to the start position, the transceiver module reads the ignition key code and transmits an encrypted message to the cluster. Validation of the key is determined and start of the engine is authorized once a separate encrypted message is sent to the powertrain's control module (PCM). The powertrain will function only if the key code matches the unique identification key code previously programmed into the PCM. If the codes do not match, the powertrain engine starter will be disabled.

In its submission, Mazda stated that the PATS antitheft device was previously approved for exemption from the requirements of Part 541. The agency granted in full the petition for the Ford Focus vehicle line beginning with model year 2006, (see 51 FR 7824, February 14, 2006), the Ford Five Hundred vehicle line beginning with

model year 2007, (see 71 FR 52206, September 1, 2006), Ford Taurus X vehicle line beginning with model year 2008, (see 72 FR 20400, April 24, 2007). There is currently no available theft rate data published by the agency for the MY 2008 Tribute vehicle line. However, Mazda provided data on the effectiveness of other similar antitheft devices installed on the vehicle lines in support of its belief that its device will be at least as effective as those comparable devices previously granted exemptions by the agency.

Mazda reported that in MY 1996, the proposed system was installed on certain U.S. Ford vehicles as standard equipment (i.e. on all Ford Mustang GT and Cobra models, Ford Taurus LX, SHO and Sable LS models). In MY 1997, the immobilizer system was installed on the Ford Mustang vehicle line as standard equipment. When comparing 1995 model year Mustang vehicle thefts (without immobilizer), with MY 1997 Mustang vehicle thefts (with immobilizer), data from the National Insurance Crime Bureau showed a 70% reduction in theft. (Actual NCIC reported thefts were 500 for MY 1995 Mustang, and 149 thefts for MY 1997 Mustang.) Mazda also provided additional data from the July 2000 Insurance Institute for Highway Safety (IIHS) news release to support its belief in the reliability of its device. The IIHS news release showed an average theft reduction of about fifty percent for vehicles equipped with immobilizer systems.

Based on the evidence submitted by Mazda, the agency believes that the antitheft device for the Mazda Tribute vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541).

In addressing the specific content requirements of 543.6, Mazda requested the agency to refer to the reliability and durability information submitted in Ford's June 5, 2002 letter to the agency regarding the identical device installed as standard equipment on the 2003 Ford Th!nk City vehicle line.[1] Ford provided a detailed list of the tests conducted and believes that the device is reliable and durable since the device complied with its specified requirements for each test.

Mazda stated that the electronic engine immobilizer device makes conventional theft methods such as hot-wiring or attacking the ignition lock cylinder ineffective, and virtually eliminates drive-away thefts. Mazda also stated that the integration of the setting device (transponder) into the ignition key prevents any inadvertent activation of the system. Mazda stated that there are 18 quintillion possible codes making a successful key duplication virtually impossible.

The agency also notes that the device will provide four of the five types of performance listed in § 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements of part 541. The agency finds that Mazda has provided adequate reasons for its belief that the antitheft device for the Mazda Tribute vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Mazda provided about its device.

For the foregoing reasons, the agency hereby grants in full Mazda's petition for exemption for the Tribute vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with the 2010 model year vehicles. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Mazda decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Mazda wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8–15914 Filed 7–11–08; 8:45 am]

BILLING CODE 4910–59–P

[1] Reliability and durability data were submitted by Ford in support of its request pursuant to 49 CFR part 542, ''*Procedures for Selecting Lines to be Covered by the Theft Prevention Standard*''.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Entities Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of four newly-designated entities and four newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.''

DATES: The designation by the Director of OFAC of the four entities and four individuals identified in this notice

pursuant to Executive Order 13382 is effective on July 8, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/offices/enforcement/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On July 8, 2008, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated four entities and four individuals whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees is as follows:

Entities

1.7TH OF TIR (a.k.a. 7TH OF TIR COMPLEX; a.k.a. 7TH OF TIR INDUSTRIAL COMPLEX; a.k.a. 7TH OF TIR INDUSTRIES; a.k.a. 7TH OF TIR INDUSTRIES OF ISFAHAN/ESFAHAN; a.k.a. MOJTAMAE SANATE HAFTOME TIR; a.k.a. SANAYE HAFTOME TIR; a.k.a. SEVENTH OF TIR), Mobarakeh Road Km 45, Isfahan, Iran; P.O. Box 81465–478, Isfahan, Iran.

2.AMMUNITION AND METALLURGY INDUSTRIES GROUP (a.k.a. AMIG; a.k.a. AMMUNITION AND METALLURGY INDUSTRY GROUP; a.k.a. AMMUNITION INDUSTRIES GROUP; a.k.a. SANAYE MOHEMATSAZI), P.O. Box 16765–1835, Pasdaran Street, Tehran, Iran; Department 145–42, P.O. Box 16765–128, Moghan Avenue, Pasdaran Street, Tehran, Iran.

3.SHAHID SATTARI INDUSTRIES, Southeast Tehran, Iran.

4.PARCHIN CHEMICAL INDUSTRIES (a.k.a. PARA CHEMICAL INDUSTRIES; a.k.a. PARCHIN CHEMICAL FACTORIES; a.k.a. PARCHIN CHEMICAL INDUSTRIES GROUP; a.k.a. PCF; a.k.a. PCI), 2nd Floor, Sanam Bldg., 3rd Floor Sanam Bldg., P.O. Box 16765–358, Nobonyad Square, Tehran, Iran; Khavaran Road Km 35, Tehran, Iran.

Individuals

1.AGHA–JANI, Dawood (a.k.a. AGHAJANI, Davood; a.k.a. AGHAJANI, Davoud; a.k.a. AGHAJANI, Davud; a.k.a. AGHAJANI, Kalkhoran Davood; a.k.a. AQAJANI KHAMENA, Da'ud); DOB 23 Apr 1957; POB Ardebil, Iran; nationality Iran; Passport I5824769.

2.HOJATI, Mohsen, c/o Fajr Industries Group, Tehran, Iran; DOB: 28 Sep 1955; POB: Najafabad, Iran; Passport Number: G4506013 (Iran); nationality: Iran.

3.KETABACHI, Mehrdada Akhlaghi (a.k.a. KETABCHI, Merhdada Akhlaghi), c/o SBIG, Tehran, Iran; DOB 10 Sep 1958; nationality Iran; Passport A0030940 (Iran).

4.MALEKI, Naser (a.k.a. MALEKI, Nasser) c/o SHIG, Tehran, Iran; DOB: circa 1960; Passport Number: A0003039; Nationality: Iranian.

Dated: July 8, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–15918 Filed 7–11–08; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated National Pursuant to Executive Order 13315, as Amended by Executive Order 13350

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of an individual whose property and interests in property have been unblocked pursuant to Executive Order 13315 of August 28, 2003, Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions, as amended by Executive Order 13350 of July 29, 2004, Termination of Emergency Declared in Executive Order12722 With Respect to Iraq and Modification of Executive Order 13290, Executive Order 13303, and Executive Order 13315.

DATES: The unblocking and removal from the list of Specially Designated Nationals of the individual identified in this notice whose property and interests in property were blocked pursuant to Executive Order 13315 of August 28, 2003, as amended by Executive Order 13350 of July 29, 2004, is effective on June 30, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://*

www.treas.gov/ofac) via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On August 28, 2003, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13315 (68 FR 52315, September 3, 2003). Section 1 of Executive Order 13315 blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to Executive Order 13315; (2) any person determined by the Secretary of Treasury, in consultation with the Secretary of State, (a) to be senior officials of the former Iraqi regime or their immediate family members; or (b) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any of the persons listed in the Annex to Executive Order 13315 or determined to be subject to Executive Order 13315.

On July 29, 2004, the President, acting under the authority of, *inter alia*, IEEPA, issued Executive Order 13350 (69 FR 46053, July 30, 2004). Executive Order 13350 terminated the national emergency with respect to Iraq declared in Executive Order 12722 and revoked Executive Order 12722 and all other executive orders based on that national emergency. It also took additional steps in response to the national emergency declared in Executive Order 13303 and expanded in Executive Order 13315, relating to obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in that country, and the development of political, administrative, and economic institutions in Iraq. More specifically, Executive Order 13350 replaced the Annex to Executive Order 13315 with a new annex that included the names of certain individuals and entities that had previously been designated under Executive Order 12722 and related authorities.

On June 30, 2008, the Director of OFAC removed from the list of Specially Designated Nationals the individual listed below, whose property and interests in property were blocked pursuant to Executive Order 13315, as amended by Executive Order 13350.

The listing of the unblocked individual follows:

NESSI, Ferruccio, Piazza Grande 26, 6600, Locarno, Switzerland (individual) [IRAQ2].

Dated: June 30, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–15942 Filed 7–11–08; 8:45 am]

BILLING CODE 4811–45–P

Corrections

Federal Register

Vol. 73, No. 135

Monday, July 14, 2008

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1304, 1306, and 1311

[Docket No. DEA–218P]

RIN 1117–AA61

Electronic Prescriptions for Controlled Substances

Correction

In proposed rule document E8–14405 beginning on page 36722 in the issue of Friday, June 27, 2008, make the following correction:

On page 36766, in Table 18, in the third column, in the first entry, ''$167,70'' should read ''$167,270''.

[FR Doc. Z8–14405 Filed 7–11–08; 8:45 am]

BILLING CODE 1505–01–D

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H.R. 6304/P.L. 110–261

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1	(869–064–00001–7)	5.00	[4] Jan. 1, 2008
2	(869–064–00002–5)	8.00	Jan. 1, 2008
3 (2006 Compilation and Parts 100 and 102)	(869–064–00003–3)	35.00	[1] Jan. 1, 2008
4	(869–064–00004–1)	13.00	Jan. 1, 2008
5 Parts:			
1–699	(869–064–00005–0)	63.00	Jan. 1, 2008
700–1199	(869–064–00006–8)	53.00	Jan. 1, 2008
1200–End	(869–064–00007–6)	64.00	Jan. 1, 2008
6	(869–064–00008–4)	13.50	Jan. 1, 2008
7 Parts:			
1–26	(869–064–00009–2)	47.00	Jan. 1, 2008
27–52	(869–064–00010–6)	52.00	Jan. 1, 2008
53–209	(869–064–00011–4)	40.00	Jan. 1, 2008
210–299	(869–064–00012–2)	65.00	Jan. 1, 2008
300–399	(869–064–00013–1)	49.00	Jan. 1, 2008
400–699	(869–064–00014–9)	45.00	Jan. 1, 2008
700–899	(869–064–00015–7)	46.00	Jan. 1, 2008
900–999	(869–064–00016–5)	63.00	Jan. 1, 2008
1000–1199	(869–064–00017–3)	22.00	Jan. 1, 2008
1200–1599	(869–064–00018–1)	64.00	Jan. 1, 2008
1600–1899	(869–064–00019–0)	67.00	Jan. 1, 2008
1900–1939	(869–064–00020–3)	31.00	Jan. 1, 2008
1940–1949	(869–064–00021–1)	50.00	Jan. 1, 2008
1950–1999	(869–064–00022–0)	49.00	Jan. 1, 2008
2000–End	(869–064–00023–8)	53.00	Jan. 1, 2008
8	(869–064–00024–6)	66.00	Jan. 1, 2008
9 Parts:			
1–199	(869–064–00025–4)	64.00	Jan. 1, 2008
200–End	(869–064–00026–2)	61.00	Jan. 1, 2008
10 Parts:			
1–50	(869–064–00027–1)	64.00	Jan. 1, 2008
51–199	(869–064–00028–9)	61.00	Jan. 1, 2008
200–499	(869–064–00029–7)	46.00	Jan. 1, 2008
500–End	(869–064–00030–1)	65.00	Jan. 1, 2008
11	(869–064–00031–9)	44.00	Jan. 1, 2008
12 Parts:			
1–199	(869–064–00032–7)	37.00	Jan. 1, 2008
200–219	(869–064–00033–5)	40.00	Jan. 1, 2008
220–299	(869–064–00034–3)	64.00	Jan. 1, 2008
300–499	(869–064–00035–1)	47.00	Jan. 1, 2008
500–599	(869–064–00036–0)	42.00	Jan. 1, 2008
600–899	(869–064–00037–8)	59.00	Jan. 1, 2008
900–End	(869–064–00038–6)	53.00	Jan. 1, 2008
13	(869–064–00039–4)	58.00	Jan. 1, 2008
14 Parts:			
1–59	(869–064–00040–8)	66.00	Jan. 1, 2008
60–139	(869–064–00041–6)	61.00	Jan. 1, 2008
140–199	(869–064–00042–4)	33.00	Jan. 1, 2008
200–1199	(869–064–00043–2)	53.00	Jan. 1, 2008
1200–End	(869–064–00044–1)	48.00	Jan. 1, 2008
15 Parts:			
0–299	(869–064–00045–9)	43.00	Jan. 1, 2008
300–799	(869–064–00046–7)	63.00	Jan. 1, 2008
800–End	(869–064–00047–5)	45.00	Jan. 1, 2008
16 Parts:			
0–999	(869–064–00048–3)	53.00	Jan. 1, 2008
1000–End	(869–064–00049–1)	63.00	Jan. 1, 2008
17 Parts:			
1–199	(869–064–00051–3)	53.00	Apr. 1, 2008
200–239	(869–064–00052–1)	63.00	Apr. 1, 2008
240–End	(869–064–00053–0)	65.00	Apr. 1, 2008
18 Parts:			
1–399	(869–064–00054–8)	65.00	Apr. 1, 2008
400–End	(869–064–00055–6)	29.00	Apr. 1, 2008
19 Parts:			
1–140	(869–064–00056–4)	64.00	Apr. 1, 2008
141–199	(869–064–00057–2)	61.00	Apr. 1, 2008
200–End	(869–064–00058–1)	34.00	Apr. 1, 2008
20 Parts:			
1–399	(869–064–00059–9)	53.00	Apr. 1, 2008
*400–499	(869–064–00060–2)	67.00	Apr. 1, 2008
500–End	(869–064–00061–1)	66.00	Apr. 1, 2008
21 Parts:			
1–99	(869–064–00062–9)	43.00	Apr. 1, 2008
100–169	(869–062–00063–4)	49.00	Apr. 1, 2007
170–199	(869–064–00064–5)	53.00	Apr. 1, 2008
200–299	(869–064–00065–3)	20.00	Apr. 1, 2008
300–499	(869–064–00066–1)	33.00	Apr. 1, 2008
500–599	(869–064–00067–0)	50.00	Apr. 1, 2008
600–799	(869–064–00068–8)	20.00	Apr. 1, 2008
800–1299	(869–064–00069–6)	63.00	Apr. 1, 2008
1300–End	(869–064–00070–0)	28.00	Apr. 1, 2008
22 Parts:			
1–299	(869–064–00071–8)	66.00	Apr. 1, 2008
300–End	(869–064–00072–6)	48.00	Apr. 1, 2008
23	(869–064–00073–4)	48.00	Apr. 1, 2008
24 Parts:			
0–199	(869–064–00074–2)	63.00	Apr. 1, 2008
200–499	(869–064–00075–1)	53.00	Apr. 1, 2008
500–699	(869–064–00076–9)	33.00	Apr. 1, 2008
700–1699	(869–064–00077–7)	64.00	Apr. 1, 2008
1700–End	(869–064–00078–5)	33.00	Apr. 1, 2008
25	(869–062–00079–1)	64.00	Apr. 1, 2007
26 Parts:			
§§ 1.0–1–1.60	(869–064–00080–7)	52.00	Apr. 1, 2008
§§ 1.61–1.169	(869–064–00081–5)	66.00	Apr. 1, 2008
§§ 1.170–1.300	(869–062–00082–1)	60.00	Apr. 1, 2007
§§ 1.301–1.400	(869–064–00083–1)	50.00	Apr. 1, 2008
§§ 1.401–1.440	(869–064–00084–0)	59.00	Apr. 1, 2008
§§ 1.441–1.500	(869–064–00085–8)	61.00	Apr. 1, 2008
§§ 1.501–1.640	(869–064–00086–6)	52.00	Apr. 1, 2008
§§ 1.641–1.850	(869–064–00087–4)	64.00	Apr. 1, 2008
§§ 1.851–1.907	(869–064–00088–2)	64.00	Apr. 1, 2008
§§ 1.908–1.1000	(869–064–00089–1)	63.00	Apr. 1, 2008
§§ 1.1001–1.1400	(869–064–00090–4)	64.00	Apr. 1, 2008
§§ 1.1401–1.1550	(869–064–00091–2)	61.00	Apr. 1, 2008
§§ 1.1551–End	(869–064–00092–1)	53.00	Apr. 1, 2008
2–29	(869–064–00093–9)	63.00	Apr. 1, 2008
30–39	(869–064–00094–7)	44.00	Apr. 1, 2008
40–49	(869–064–00095–5)	31.00	[6] Apr. 1, 2008
50–299	(869–064–00096–3)	45.00	Apr. 1, 2008

Title	Stock Number	Price	Revision Date
*300–499	(869–064–00097–1)	64.00	Apr. 1, 2008
500–599	(869–062–00098–7)	12.00	[5] Apr. 1, 2007
600–End	(869–064–00099–8)	20.00	Apr. 1, 2008
27 Parts:			
1–39	(869–064–00100–5)	35.00	Apr. 1, 2008
40–399	(869–064–00101–3)	67.00	Apr. 1, 2008
400–End	(869–064–00102–1)	21.00	Apr. 1, 2008
28 Parts:			
0–42	(869–062–00103–7)	61.00	July 1, 2007
43–End	(869–062–00104–5)	60.00	July 1, 2007
29 Parts:			
0–99	(869–062–00105–3)	50.00	[7] July 1, 2007
100–499	(869–062–00106–1)	23.00	July 1, 2007
500–899	(869–062–00107–0)	61.00	[7] July 1, 2007
900–1899	(869–062–00108–8)	36.00	July 1, 2007
1900–1910 (§§ 1900 to 1910.999)	(869–062–00109–6)	61.00	July 1, 2007
1910 (§§ 1910.1000 to end)	(869–062–00110–0)	46.00	July 1, 2007
1911–1925	(869–062–00111–8)	30.00	July 1, 2007
1926	(869–062–00112–6)	50.00	July 1, 2007
1927–End	(869–062–00113–4)	62.00	July 1, 2007
30 Parts:			
1–199	(869–062–00114–2)	57.00	July 1, 2007
200–699	(869–062–00115–1)	50.00	July 1, 2007
700–End	(869–062–00116–9)	58.00	July 1, 2007
31 Parts:			
0–199	(869–062–00117–7)	41.00	July 1, 2007
200–499	(869–062–00118–5)	46.00	July 1, 2007
500–End	(869–062–00119–3)	62.00	July 1, 2007
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–062–00120–7)	61.00	July 1, 2007
191–399	(869–062–00121–5)	63.00	July 1, 2007
400–629	(869–062–00122–3)	61.00	July 1, 2007
630–699	(869–062–00123–1)	37.00	July 1, 2007
700–799	(869–062–00124–0)	46.00	July 1, 2007
800–End	(869–062–00125–8)	47.00	July 1, 2007
33 Parts:			
1–124	(869–062–00126–6)	57.00	July 1, 2007
125–199	(869–062–00127–4)	61.00	July 1, 2007
200–End	(869–062–00128–2)	57.00	July 1, 2007
34 Parts:			
1–299	(869–062–00129–1)	50.00	July 1, 2007
300–399	(869–062–00130–4)	40.00	July 1, 2007
400–End & 35	(869–062–00131–2)	61.00	July 1, 2007
36 Parts:			
1–199	(869–062–00132–1)	37.00	July 1, 2007
200–299	(869–062–00133–9)	37.00	July 1, 2007
300–End	(869–062–00134–7)	61.00	July 1, 2007
37	(869–062–00135–5)	58.00	July 1, 2007
38 Parts:			
0–17	(869–062–00136–3)	60.00	July 1, 2007
18–End	(869–062–00137–1)	62.00	July 1, 2007
39	(869–062–00138–0)	42.00	July 1, 2007
40 Parts:			
1–49	(869–062–00139–8)	60.00	July 1, 2007
50–51	(869–062–00140–1)	45.00	July 1, 2007
52 (52.01–52.1018)	(869–062–00141–0)	60.00	July 1, 2007
52 (52.1019–End)	(869–062–00142–8)	64.00	July 1, 2007
53–59	(869–062–00143–6)	31.00	July 1, 2007
60 (60.1–End)	(869–062–00144–4)	58.00	July 1, 2007
60 (Apps)	(869–062–00145–2)	57.00	July 1, 2007
61–62	(869–062–00146–1)	45.00	July 1, 2007
63 (63.1–63.599)	(869–062–00147–9)	58.00	July 1, 2007
63 (63.600–63.1199)	(869–062–00148–7)	50.00	July 1, 2007
63 (63.1200–63.1439)	(869–062–00149–5)	50.00	July 1, 2007
63 (63.1440–63.6175)	(869–062–00150–9)	32.00	July 1, 2007
63 (63.6580–63.8830)	(869–062–00151–7)	32.00	July 1, 2007
63 (63.8980–End)	(869–062–00152–5)	35.00	July 1, 2007
64–71	(869–062–00153–3)	29.00	July 1, 2007
72–80	(869–062–00154–1)	62.00	July 1, 2007
81–84	(869–062–00155–0)	50.00	July 1, 2007
85–86 (85–86.599–99)	(869–062–00156–8)	61.00	July 1, 2007
86 (86.600–1–End)	(869–062–00157–6)	61.00	July 1, 2007
87–99	(869–062–00158–4)	60.00	July 1, 2007
100–135	(869–062–00159–2)	45.00	July 1, 2007
136–149	(869–062–00160–6)	61.00	July 1, 2007
150–189	(869–062–00161–4)	50.00	July 1, 2007
190–259	(869–062–00162–2)	39.00	[7] July 1, 2007
260–265	(869–062–00163–1)	50.00	July 1, 2007
266–299	(869–062–00164–9)	50.00	July 1, 2007
300–399	(869–062–00165–7)	42.00	July 1, 2007
400–424	(869–062–00166–5)	56.00	[7] July 1, 2007
425–699	(869–062–00167–3)	61.00	July 1, 2007
700–789	(869–062–00168–1)	61.00	July 1, 2007
790–End	(869–062–00169–0)	61.00	July 1, 2007
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–062–00170–3)	24.00	July 1, 2007
101	(869–062–00171–1)	21.00	July 1, 2007
102–200	(869–062–00172–0)	56.00	July 1, 2007
201–End	(869–062–00173–8)	24.00	July 1, 2007
42 Parts:			
1–399	(869–062–00174–6)	61.00	Oct. 1, 2007
400–413	(869–062–00175–4)	32.00	Oct. 1, 2007
414–429	(869–062–00176–2)	32.00	Oct. 1, 2007
430–End	(869–062–00177–1)	64.00	Oct. 1, 2007
43 Parts:			
1–999	(869–062–00178–9)	56.00	Oct. 1, 2007
1000–end	(869–062–00179–7)	62.00	Oct. 1, 2007
44	(869–062–00180–1)	50.00	Oct. 1, 2007
45 Parts:			
1–199	(869–062–00181–9)	60.00	Oct. 1, 2007
200–499	(869–060–00182–7)	34.00	[9] Oct. 1, 2007
500–1199	(869–062–00183–5)	56.00	Oct. 1, 2007
1200–End	(869–062–00184–3)	61.00	Oct. 1, 2007
46 Parts:			
1–40	(869–062–00185–1)	46.00	Oct. 1, 2007
41–69	(869–062–00186–0)	39.00	Oct. 1, 2007
70–89	(869–062–00187–8)	14.00	Oct. 1, 2007
90–139	(869–062–00188–6)	44.00	Oct. 1, 2007
140–155	(869–062–00189–4)	25.00	Oct. 1, 2007
156–165	(869–062–00190–8)	34.00	Oct. 1, 2007
166–199	(869–062–00191–6)	46.00	Oct. 1, 2007
200–499	(869–062–00192–4)	40.00	Oct. 1, 2007
500–End	(869–062–00193–2)	25.00	Oct. 1, 2007
47 Parts:			
0–19	(869–062–00194–1)	61.00	Oct. 1, 2007
20–39	(869–062–00195–9)	46.00	Oct. 1, 2007
40–69	(869–062–00196–7)	40.00	Oct. 1, 2007
70–79	(869–062–00197–5)	61.00	Oct. 1, 2007
80–End	(869–062–00198–3)	61.00	Oct. 1, 2007
48 Chapters:			
1 (Parts 1–51)	(869–062–00199–1)	63.00	Oct. 1, 2007
1 (Parts 52–99)	(869–062–00200–9)	49.00	Oct. 1, 2007
2 (Parts 201–299)	(869–062–00201–7)	50.00	Oct. 1, 2007
3–6	(869–062–00202–5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
7–14	(869–062–00203–3)	56.00	Oct. 1, 2007
15–28	(869–062–00204–1)	47.00	Oct. 1, 2007
29–End	(869–062–00205–0)	47.00	Oct. 1, 2007
49 Parts:			
1–99	(869–062–00206–8)	60.00	Oct. 1, 2007
100–185	(869–062–00207–6)	63.00	Oct. 1, 2007
186–199	(869–062–00208–4)	23.00	Oct. 1, 2007
200–299	(869–062–00208–1)	32.00	Oct. 1, 2007
300–399	(869–062–00210–6)	32.00	Oct. 1, 2007
400–599	(869–062–00210–3)	64.00	Oct. 1, 2007
600–999	(869–062–00212–2)	19.00	Oct. 1, 2007
1000–1199	(869–062–00213–1)	28.00	Oct. 1, 2007
1200–End	(869–062–00214–9)	34.00	Oct. 1, 2007
50 Parts:			
1–16	(869–062–00215–7)	11.00	Oct. 1, 2007
17.1–17.95(b)	(869–062–00216–5)	32.00	Oct. 1, 2007
17.95(c)–end	(869–062–00217–3)	32.00	Oct. 1, 2007
17.96–17.99(h)	(869–062–00218–1)	61.00	Oct. 1, 2007
17.99(i)–end and 17.100–end	(869–062–00219–0)	47.00	[8] Oct. 1, 2007
18–199	(869–062–00226–3)	50.00	Oct. 1, 2007
200–599	(869–062–00221–1)	45.00	Oct. 1, 2007
600–659	(869–062–00222–0)	31.00	Oct. 1, 2007
660–End	(869–062–00223–8)	31.00	Oct. 1, 2007
CFR Index and Findings Aids	(869–062–00050–2)	62.00	Jan. 1, 2007
Complete 2007 CFR set		1,499.00	2008
Microfiche CFR Edition:			
Subscription (mailed as issued)		406.00	2008
Individual copies		4.00	2008
Complete set (one-time mailing)		332.00	2007
Complete set (one-time mailing)		332.00	2006

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2007. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2007. The CFR volume issued as of October 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.